

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: PR86-012

Case Officer: Darren McBride

Site Address: The Swan Inn, Swan Street, Wittersham, Tenterden,
Kent TN30 7PH

Title Number(s): K341975 (FREEHOLD)

Nominating Body: Wittersham Parish Council

Nomination Validated: 2 August 2023

Deadline Date: 27 September 2023

*

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 2 August 2023 and so must be determined by 27 September 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:

- Wittersham Parish Council (Nominating Body)
- Freehold Owner(s)

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.

- Occupier(s)
- Cllr N Ovenden (Leader of the Council)
- Cllr L Wright (Cabinet Member for Communities and Health)
- Cllr J Shilton (Ward Member)

If the Solicitor to the Council and 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 processes.

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.

Protected 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 appear to 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 premises were previously included in the Council's 'List of Assets of Community Value.' The previous listing expired on 9 May 2021. The latest nomination seeks re-inclusion of the premises in the List⁴.

Also, in late-May 2021 the premises⁵ were the subject of an unsuccessful nomination⁶ which had been submitted by the current nominating body.

Turning to the current community nomination, the 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. The questions and answers state as follows:

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

A1. 'Public House.'

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

A2. 'There is a beer garden attached to the pub which is used and enjoyed by local people including families. This is particularly enjoyed in the summer months and brings different groups of people together to use the pub in furthering the recreational and social interests of the community.'

⁴ The previous successful nomination was submitted by a different community body.

⁵ Then known as 'The Oxney Gourmet Pie and Burger Bar.'

⁶ Decision dated 22 July 2021

'The pub has a great daytime food menu (breakfast onwards) enjoyed by the community.

'This is the only pub in the village or for several miles in any direction, with an infrequent bus service and none in the evenings.

'The pub contributes to local culture with live musical performances.

'There is good access for disabled people at the pub, with easily accessible and inclusive space to meet with other members of the community, and provides a safe and enjoyable environment in furthering persons' individual wellbeing.

'The pub provides space for specific community functions, eg. a social/coffee morning held by CARM (Caring Altogether on Romney Marsh) for local senior citizens.

'The KCC mobile library service uses the car park from time to time as it switches its destinations around.'

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. 'The pub was shut by the previous owner from shortly before Covid 19 until it was bought at auction and reopened as a pub by the present owner. This long-established pub will now serve the local community and further its wellbeing by continuing to provide and build on the services that it offers, and it can continue this for the long term future, thereby supporting the principles of ACV registration.'

Generally, public houses are the type of buildings which the Community Right to Bid Scheme is designed to protect. However, 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.

The building is currently open and operating as a public house. No evidence has been submitted which demonstrates that the business is viable and therefore

likely to continue to remain open. However, there is no requirement for the nominating body to demonstrate future viability. The test is simply that it is 'realistic to think that there can continue to be non-ancillary use of the building...' The fact that the building is currently open and operating as a public house would, in my view, suggest that it is realistic to think that its current use can continue.

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

In this case, the nominating body claims that the public house:

- Has a beer garden which is used and enjoyed by local people including families and which brings different groups of people together thus furthering the recreational and social interests of the community
- Has a daytime food menu (breakfast onwards) enjoyed by the community
- Hosts live musical performances
- Hosts social/coffee mornings held by CARM (Caring Altogether on Romney Marsh) for local senior citizens
- Allows Kent County Council's mobile library service to use the car park from time to time
- Has good access for disabled people
- Is the only pub in the village or for several miles in any direction

Generally, a local meeting place of this type would be considered as furthering the social wellbeing or social interests of the local community. The main use of the building and its beer garden as a public house would further the social wellbeing or social interests of the local community and the restaurant/provision of food is likely to be viewed as non-ancillary to the main use.

I give little weight to the infrequent use of car park by the mobile library because this is likely to be viewed as ancillary to the main use. However, the hosting of live music, social/coffee mornings etc. would be non-ancillary to the main use.

The fact that the nominated building 'is the only pub in the village or for several miles in any direction' underlines its importance in furthering the social wellbeing or social interests of the local community.

Conclusions

In my view, on balance, it is reasonable to conclude that the actual current use of the building/land as a public house does further the social wellbeing or social interests of the local community.

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-heading *Consequences of Listing*) but the internal listing review process and the

right of appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value.'


Recommendation

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

*

AUTHORITY

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



.....
Solicitor to the Council and Monitoring Officer

Date: 25 / 09 / 2023

H. M. LAND REGISTRY

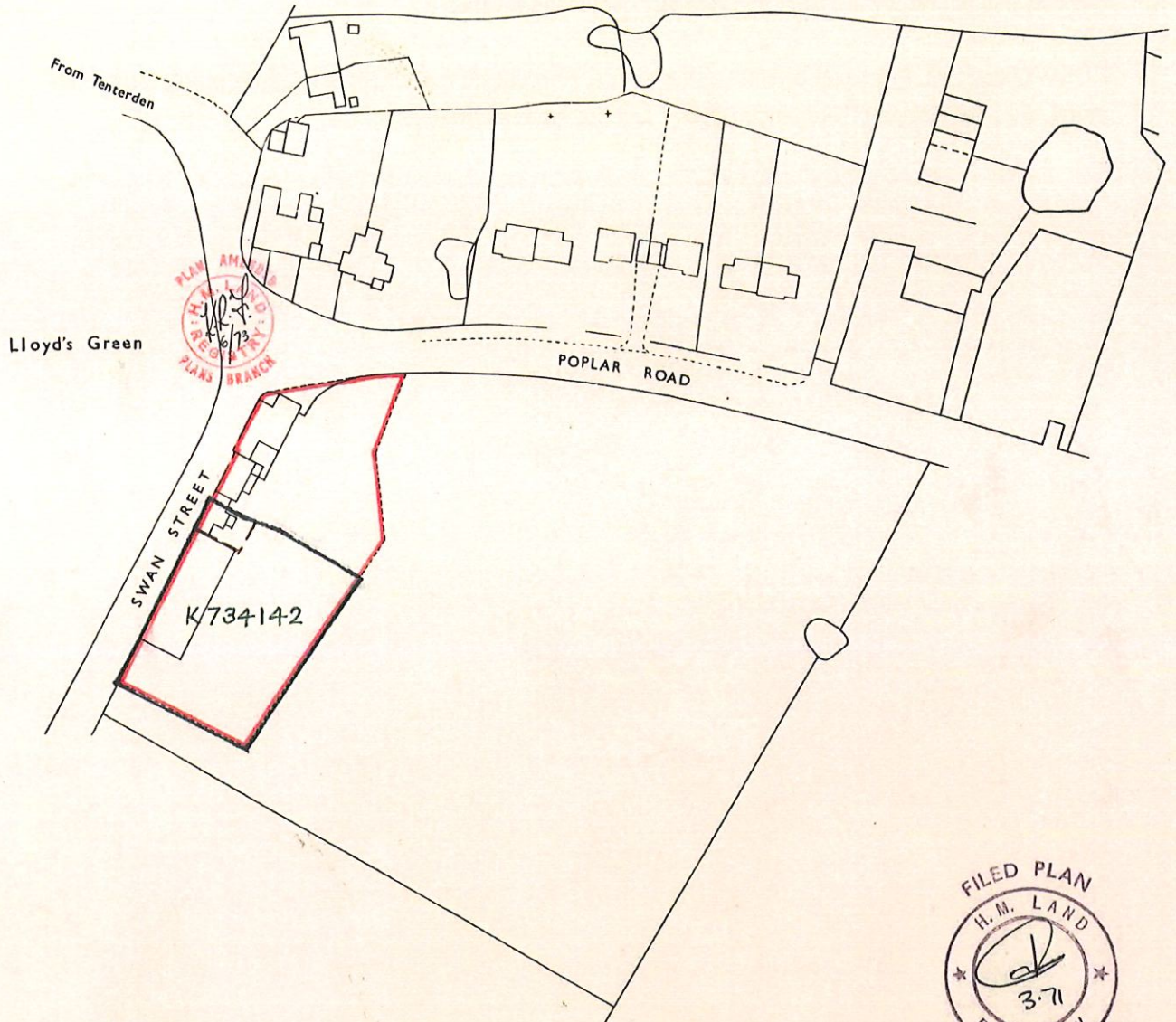
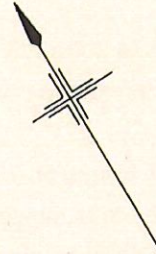
NATIONAL GRID PLAN LXXIX 12
KENT

Scale 1/1250

Enlarged from 1/2500

WITTERSHAM PARISH

THE BOUNDARIES SHOWN BY DOTTED LINES HAVE BEEN FLOTTED FROM THE PLANS ON THE DEEDS AND ARE SUBJECT TO REVISION ON SURVEY.



© Crown Copyright 1969

TITLE No. K341975

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 25 July 2023 shows the state of this title plan on 25 July 2023 at 10:28:52. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Nottingham Office .

© Crown copyright. Produced by HM Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.