

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: PR86-006

Case Officer: Darren McBride

Site Address: The Barrow House (formerly known as The George Inn Public House), The Street, Egerton, Ashford, Kent TN27 9DJ

Title Number(s): K342007 (Freehold) and TT52336 (Leasehold)

Nominating Body: Egerton Parish Council

Nomination Validated: 28 September 2020

Deadline Date: 23 November 2020

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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.

¹ Subsection 88(1) of the Act

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

- 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 28 September 2020 and so should be determined by 23 November 2020.

If the Council accepts a valid nomination then it must be included in 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:

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

- Egerton Parish Council (Nominating Body)
- Freehold Owner(s)
- Leasehold Owner(s)
- Occupier(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)
- Cllr L Krause (Deputy Portfolio Holder for Community Safety and Wellbeing)
- Cllr K Mulholland (Ward Member)

If the Corporate Director (Law and Governance) and Monitoring Officer includes the asset in 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.

Permitted Development Rights

Another consequence of listing is that a building which is used, or was last used, as a drinking establishment which is listed as an asset of community value loses certain permitted development rights for the specified five year period⁴. As a result, planning permission would be required for the change of use or the demolition of the building.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 of 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. 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. 'It is the only public house in the centre of the village and traditional focal point for our community. Although currently subject to Covid 19 lockdown suggestions, it is an important centre and regular meeting place for our

⁴ Classes A and B of Part 3 and Class B of Part 11, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (SI 2015/596)

community and since our successful nomination in 2015 has been completely refurbished. It serves food and many in the community eat here on a regular basis. Informal meetings of local groups regularly take place here, including regular coffee mornings during the winter months (in the summer months the local coffee mornings take place outdoors in the larger gardens locally). It is our local live music venue with regular weekend music events. It is home to the local folk and blues club and provides a centre for the youth (i.e. young adults) of the village. Our local charity fundraising draw also regularly takes place here'

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. 'We need a Public House in the centre of the village for all the obvious reasons stated above, and we consider that these and other activities will continue indefinitely'

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.

In this case, the building was the subject of a previous successful nomination in 2015⁵. The building was included in the Council's List of Assets of Community Value until that entry expired on 16 October 2020. This latest nomination seeks to return the building to the List.

When this nomination was validated I notified the individuals and bodies mentioned under the heading *Procedure* (above). In response, the Leasehold Owner contacted me stating that they do not support the nomination and that they would like me to 'give careful consideration to its inclusion for the following reasons':

1. The Barrow House has been a community asset for the last five years (until 15 October this year) and has been for sale for the last 2 years.

⁵ The building was then known as The George Inn Public House

We informed the Egerton Parish Council of this and yet the 'voluntary community body' with a 'local connection' has made no attempt to enquire about the terms of sale nor have they expressed any interest whatsoever in the property;

2. The Barrow House was extensively invested in during the summer of 2016. Planning applications/consent 16/00463/AS and 16/00460/AS and yet the support from the local community for their local pub has been substantially lacking;
3. The Barrow House is not the only pub in [the] village as there is also the Rose & Crown on Mundy Bois Road;
4. The village coffee morning group sighted [*sic*] in the 2015 nomination do not use The Barrow House and they advised us of their decision to use the other village pub, the Rose & Crown instead;
5. Since The Barrow House reopened in 2016, we have spent much time and investment in creating events for the local community to enjoy to try and increase trade but again there was very little take up;
6. Similarly, our music evenings and comedy nights have needed extensive advertising to the broader community in the area as there is not sufficient support locally;
7. When the village shop closed earlier this year, The Barrow House offered a limited range of essential products for sale over the bar but sadly not one person made use of this facility;
8. Egerton has a substantial and recently built village hall which is an asset more than adequate to serve the village and this is the real Community Asset in the village.

The Leasehold Owner's letter concluded:

'We believe the intention of the nomination is to cause 'nuisance value' in the sale of the pub and we sincerely request the council to consider carefully whether there is a real case to include The Barrow House as an Asset of Community Value. Surely, it cannot be an Asset of Community Value without community support.'

The process does not provide for a consultation or for the acceptance of representations. Nevertheless, I have taken on board the comments of the Leasehold Owner.

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 is the:

- 'only public house in the centre of the village⁶ and traditional focal point for our community';
- 'is an important centre and regular meeting place for our community'; and that
- 'informal meetings of local groups regularly take place here.'

Generally, a local meeting place of this type would be considered as furthering the social wellbeing or social interests of the local community.

The nominating body claims that the public house plays host to 'regular coffee mornings during the winter months,' although this is disputed by the Leasehold Owner. That said, in my view, the use of a public house for such purposes would probably not in any event be representative of the building's 'actual current use.' The fact that the coffee mornings (if they do take place at all) do not take place all year round further suggests that such a use would be merely 'an ancillary use' of the building. As such, in my view, this use would not be in accordance with the definition of buildings or land of 'community value' as set out in section 88 of the Act.

However, the serving of food is likely to be viewed as non-ancillary to the main use. Likewise, the hosting of 'local live music' events⁷ is also likely to be viewed as a non-ancillary use which furthers the social wellbeing or social interests of the local community.

Also, of course, the main use of the building as a public house would itself further the social wellbeing and social interests of the local community.

The nominating body claims that the building 'provides a centre for the youth (i.e. young adults) of the village.' Given that the building is a public house, I take 'youth' to mean young adults who gather to, say, enjoy the 'local live music' events. If so, then I feel that such a use would be viewed as a non-ancillary use which furthers the social wellbeing or social interests of the local community.

The use of the premises for the 'local charity fundraising draw' would also be viewed as a non-ancillary use which furthers the social wellbeing or social interests of the local community.

Regarding the Leasehold Owner's representations, I cannot comment on the nominating body's motives for submitting the nomination I note the sense that the local community is not fully supportive of the public house. This is unfortunate.

I also note that there are other premises in the village, such as the Village Hall, which the Leasehold considers 'is an asset more than adequate to serve the village and this is the real Community Asset in the village.' This may be true but

⁶ The building may be the only pub in the *centre* of the village but the Leasehold Owner points out that there is another local pub – The Rose & Crown on Mundy Bois Road.

⁷ And 'comedy nights' as confirmed by the Leasehold Owner.

I do not have before me a nomination for the Village Hall to be included in the Council's List of Assets of Community Value and, in any event, another premises in the locality which may be worthy of inclusion has no bearing on the merits of this nomination which must be determined on its own merits.

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 and 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 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 Corporate Director (Law and Governance) and Monitoring Officer accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value'.

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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.



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Corporate Director (Law and Governance) and Monitoring Officer

Date: 23 / 11 / 2020

