

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: PR86-030

Case Officer: Darren McBride

Site Address: Open Space forming part of land known as 'Land lying to the south of Grasmere Road and to the west of The Pasture, Kennington, Ashford, Kent'

Title Number(s): K273545 (Freehold) (Part)

Nominating Body: Kennington Community Council

Nomination Validated: 23 October 2020

Deadline Date: 18 December 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 26 April 2017 and so must be determined by 21 June 2017.

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:

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

- Kennington Community Council (the nominating body)
- Freehold Owner(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 N Iliffe (Ward Member)

If the Corporate Director (Law and Governance) and Monitoring Officer includes the asset on the Council's 'List of Assets of Community Value' then the owner has the right, within eight weeks from the date when written notice of listing is given, to request 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. The questions and answers state as follows:

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

A1. 'The land has been used as public open space since it was laid out in 1967 as part of the development of the area. It has been used by local residents for a variety of purposes including children playing; ball games; taking dogs for walks; wandering or promenading by way of pastime; sitting outside.

'It has been maintained by Ashford Borough Council since inception and was generally believed to be in public ownership. Recently it has emerged that the land was acquired in March 2020 by London and Capital Housing Limited.'

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

A2. 'Social wellbeing is furthered by providing opportunities to engage in lawful pastimes and in other recreational activities, either singly or in groups, and by provision of informal green space in an otherwise built-up area. Social interests are furthered by fostering community spirit among near neighbours and creating a sense of place and location.'

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. 'It is likely that the current use of the land will continue indefinitely, in line with historical usage patterns since inception.'

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 significant percentage of their local community.

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 information submitted by the nominating body indicates that the land is used by local community for the following purposes:

- children playing;
- ball games;
- dog walking;
- wandering or promenading;
- sitting outside

In my view, these uses appear integral to the main use of the land as an informal open amenity space for the benefit of the local community. As such, these uses would further the social wellbeing or social interests of the local community.

The current main use(s) of the land (as outlined above) lead me to conclude that it does further the social wellbeing or social interests of the local community. Moreover, the fact that the land is currently being used for these community purposes suggests that it is realistic to think that the current use can continue.

Conclusions

In my view, it is reasonable to conclude that the actual current use of the land does further the social wellbeing or social interests of the local community and that there can continue to be non-ancillary use of the land which will further the social wellbeing or social interests of the local community.

In making the recommendation I have taken into account the ownership of the land which the nominating body had believed, until recently, was in public ownership. Notwithstanding that the nominated land is in fact in private ownership, there is no suggestion that the uses referred to by the nominating body have been/would be classed as 'trespassory.' Given that the peaceable uses have been occurring openly for over half a century and have involved no force or deception then I am satisfied that even if any of the cited uses could be classed as technically unlawful then they would still not *per se* fall outside the ambit of section 88 of the Act. In reaching this conclusion I have had regard to the First-Tier Tribunal's decisions in *Higgins Homes v London Borough of Barnet (2014)(UKFTT/CR/2014/0006 (GRC) [21]-[22]* and *Banner Homes Limited v St Albans City and District Council (2014)(UKFTT/CR/2014/0018 (GRC) [22]-[36]*.

I have also taken into consideration the potentially adverse impact that listing could have on the owner(s) of the 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 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 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: 16 / 12 / 2020

