



ASHFORD
BOROUGH COUNCIL

Localism Act 2011

The Assets of Community Value (England) Regulations 2012

The Plough Inn, Lees Road, Brabourne Lees, Ashford, Kent, TN25 6QB

Owner: DD Brothers Limited (represented by its director, Mr David Derrick)

Internal Listing Review of Asset of Community Listing

1. I have been appointed by Ashford Borough Council to review the decision made on the 19th March 2019 by the Council's Head of Legal and Democracy to include the Plough Inn, Brabourne Lees in the List of Assets of Community Value maintained by the Council under section 87 of the Localism Act 2011 ('the Act').
2. I am required to conduct the review under the provisions of The Act and Assets of Community Value (England) Regulation 2012 ('the Regs').
3. The request for a review was received by the Council on 3rd April 2019 within the eight weeks permitted time frame. The period of time in which the Council is required to complete the review was extended by agreement with the owner of the Plough Inn as permitted by paragraph 9 of Schedule 2 to the Regs.

The Land

4. The building and land subject to the listing is the Plough Inn, Lees Road, Brabourne Lees, Ashford, Kent, TN25 6QB.

Approach to this Review

5. As the Review Officer I am required to consider both the decision to list the asset and the landowner's points that have in essence argued that listing was not appropriate in this case.
6. The law determining the right to bid, the listing conditions and the review process is variously set out in:
 - a) The Act, Part 5, Chapter 3, Section 88 (land of community value). This section places a responsibility on a local authority to form its opinion (my underlining) on whether a building or other land in its area should be viewed as land of community value. Section 88 then includes the general criteria against which a council should form its opinion.
 - b) The Regs contain the details to give effect to Section 88, and contain details of processes to be followed, definitions of local connection, voluntary and community bodies and community interest groups, the content that must be included on nomination forms, and various schedules including one covering the review procedure.
7. Supporting the Act and the Regs is a non-statutory advice note from DCLG published in October 2012¹.
8. The legislation and the non-statutory advice note are written in general terms, leaving several important terms undefined, and a review and appeal process that entitles the landowner to make representations, but not the nominator. This may be deliberate, recognising that over-prescription of how authorities should proceed to implement the Act cuts across the requirement for councils to form their opinion on whether land or buildings have community value.

¹ *Community Right to Bid: Non-statutory advice note for local authorities*

9. As there have been a large number of listings up and down the country and a significant number of appeal decisions taken by the First-Tier Tribunal, it has been my approach to consider relevant examples in helping with this review.

The Nomination for Listing

10. On the 30th January 2019 the Plough Inn, Brabourne was nominated by Brabourne Parish Council to be included in the List of Assets of Community Value which the Council is required to maintain by virtue of section 87 of the Act.

The Decision to include the Land in the list of Assets of Community Value

11. On the 19th March 2019 the decision regarding the nomination was made by the Council's Head of Legal and Democracy. It concluded that the Plough Inn, Brabourne was an asset of community value within section 88 (1) of the 2011 Act. It therefore accepted the nomination and the Plough Inn was included in the Council's List of Assets of Community Value from that date.
12. In the decision notice dated 19th March 2019 the Council set out its reasons for its decision in the following terms:-

"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 my view, on balance, the main use of the building as a public house would further the social wellbeing or social interests of the local community..."

"Accordingly, as I have already concluded that the actual main use of the building prior to its closure would have furthered the social wellbeing or social interests of the local community, then it follows that in my view there was a time in the recent past when an actual main use of the building that was not an ancillary use did further the social wellbeing or social interests of the local community..."

"In this case, according to the nominating body, the public house has been closed for less than one year and so it is likely that the fabric of the building remains in a good state of repair. The nominating body also claims that no alterations would be required for the community use to recommence and the public house could be re-opened more or less immediately..."

"That being so, in my view, it is realistic to consider that the building could re-open as a public house in the next five years..."

Conclusion

"For the reasons set out above there is, in the Council's view, a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community; and it is, in the Council's view, realistic to think that there is a time in the next five years when there could be non-ancillary use of the building/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community."

The Request for a Review

13. A request was received from the owner on the 3rd April 2019 to review the decision pursuant to section 92 of the Act.
14. As is likely with the review request additional information has been made available that was not available at the time of the original listing.
15. An oral hearing was requested by the owner and that hearing was held on Thursday 13th June 2019. The Council's planning lawyer, Darren McBride, attended the hearing with the agreement of

the owner and took notes of the meeting which he subsequently made available for myself and the owner of the discussion had during the hearing.

16. The owner's ground for the review was that the Plough Inn is no real asset to the community.
17. The owner has pointed out that when he purchased the Plough Inn, the pub garden had already been sub-divided and sold separately and a planning consent granted for the erection of five detached bungalows on the former pub garden².
18. The pub at the time of purchase was already failing as a viable pub and the sales of beer from Shepherd Neame has reduced considerably over several years, clearly the pub itself had not been functioning as a viable asset for some time, hence the reason for its closure and sale.
19. The owner had purchased the pub with the intention to redevelop the land following the success on the 'garden part' of the site that had been sold separately, breaking up the site as a pub with a functioning garden asset.
20. The pub and its garden which had previously been used as a community meeting point for village events had been undermined by the separation of the pub from the garden and sold off separately.
21. The owner has submitted a series of additional evidence relating to the pub including a viability statement from Shepherd Neame, demonstrating that the pub's lack of viability due to the amount of beer supplied to the trade as a going concern has been in decline for more than ten years.

He also provided evidence of the severe disrepair of the building and supplied quotations to undertake the necessary repairs to the roof of the pub that would be at considerable expense, demonstrating that it could not be easily made available again as a community asset without considerable expense to allow it to be useable.

The owner bought the property as a boarded up pub with the intention of seeking planning permission for residential development of the site since the pub garden had already obtained a planning consent for residential housing.

Community Benefit

22. By its nature a local pub should be conducive to promoting social well-being, merely by providing opportunities for local people to gather and socialise. Pubs were always seen by government as potentially a key asset for local communities and a principal target for the legislation. Nevertheless each individual circumstance must be considered and in this case the Council must be satisfied that in its opinion, the Plough Inn provides/provided some community benefit.
23. The subsequent evidence provided by the owner (which was not available to the Council at the time of listing) demonstrates that the community value of this asset has now been lost, as the separation of its assets (pub and garden) for its value to the community ceased when it was separated. Moreover, the asset has not been invested in over many years and the substantial cost of repair to make it an useable asset again leads me to conclude that it is now unrealistic to think that there is a time in the next five years when there could be a non-ancillary use of the building/land that would further (whether or not in the same ways before) the social wellbeing or social interests of the local community.

Conclusion

24. Having looked at the new documentary evidence and upon hearing the verbal evidence at the oral hearing on the 13th June 2019 provided by the owner following the original listing request, in my opinion the Plough Inn has little opportunity to provide a valuable community asset, and it is difficult to see any realistic way over the next five years how this could be used by the community or provide for the social wellbeing or social interest of the community.

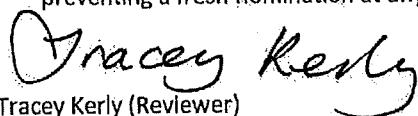
Formal Decision

² Planning Ref: 18/01568/AS

25. In conclusion and for reasons set out above I uphold the owner's Internal Listing Review. It is therefore my decision that the Plough Inn is to be removed from the List of Assets of Community Value maintained by the Council.

What Happens Next?

26. The review is upheld. The Plough Inn will be removed from the Council's List of Assets of Community Value.
27. There are no further rights of review to the Council. There is a right of appeal to the First-Tier Tribunal (General Regulatory Chamber, HM Courts and Tribunals Service, PO Box 9300, Leicester, LE1 8DJ. E-mail grc@hmcts.gsl.gov.uk Telephone 0300 123 4504) if the owner does not agree with the decision. There is no right of appeal to the Council or the Tribunal for the nominator.
28. Although the decision is to remove the Plough Inn from the Council's list there is nothing in law preventing a fresh nomination at any future time.



Tracey Kerly (Reviewer)

Chief Executive

5th July 2019