



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Tribunal Reference: CR/2014/0008
Appellant: T.G. Sawtell
Respondent: Mid-Devon District Council
Second Respondent: Crediton Hamlets Parish Council
Judge: NJ Warren

DECISION NOTICE

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as “the moratorium” will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
2. This concerns a pub at Yeoford in Devon now known as “The Mare and Foal”. It is just by the railway station and was originally known as “The Station Hotel”. Mid-Devon District Council (“Mid-Devon”) placed the pub on the list of assets of community value at the request of Crediton Hamlets Parish Council (“the Parish Council”). Mr Sawtell, the owner, asked unsuccessfully for a review of the decision and now appeals to the Tribunal.

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3. There was a hearing of the appeal on 5th November 2014. Mr Sawtell was represented by Mr Culverhouse; Mid-Devon by Mr Guscott, its head of planning and regeneration; and the Parish Council by Mr Leigh and Mr Maynard.
4. I should deal first with a procedural objection made by Mr Culverhouse. He complains that although Mid-Devon notified Mr Sawtell, as they were legally bound to do, when they received the application, they did not state in the notice that Mr Sawtell could make representations if he so desired. There is nothing in this point. It is true that Mid-Devon have, as a result of Mr Culverhouse's complaint now changed the wording of their standard letter; but the legal duty is simply to give notice, which is what Mid-Devon have done. So there was no procedural error, let alone one which was so serious it could not be cured.
5. Mr Sawtell keeps the pub open at the moment. Mr Culverhouse accepted at the hearing that the present condition for listing contained in Section 88(1)(a) Localism Act 2011 is satisfied:- in other words the current use of the pub furthers the social wellbeing or social interests of the local community.
6. Mr Culverhouse's challenge to the listing is that the future condition is not satisfied. The question therefore becomes whether it is realistic to think that there can continue to be a non-ancillary use of the pub which will further (whether or not in the same way) the social wellbeing or social interests of the local community. Mr Culverhouse argued that such a future was unrealistic because the pub is not viable. He referred to the recession and the general decline in the pub trade. He supplied an analysis of the pub accounts which showed, he submitted, that the profits made are not sufficient for Mr Sawtell to live on nor do they provide the return on his investment to which he is entitled. It was not realistic to expect anyone to make the further investment in the pub which was required to make it into a business providing both a decent return on capital and a decent living for the proprietor.
7. Mr Sawtell told me that his understanding was that there was no way in which the site could be developed for, say, housing. Planning permission was highly unlikely because the pub lies in a conservation area and is on a flood plain.

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8. At one point, Mr Culverhouse appeared to submit that the question was whether the pub could realistically remain open for another five years. This is not the test which I have to apply; there is no specific period of time mentioned in Section 88(1)(b).

9. I agree with Mid-Devon that the future condition is satisfied in this case. Mr Culverhouse's figures may be correct but they do not and cannot prove that the pub is not functioning now; similarly, it is realistic to think that it can function in the future. The pub has been a pub for over 100 years. It is still a pub. It is for sale as a going concern. There is no prospect of planning permission for any change of use. There is an active Parish Council with a keen interest. In my judgment, it is realistic to think that its current use can continue.

NJ Warren

Chamber President

Dated 14 November 2014