



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

Tribunal Reference: CR/2015/0001
Appellant: Punch Partnerships (PTL)
Respondent: Wyre Borough Council
Judge: Peter Lane

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. Section 88 of the 2011 Act provides as follows:-

“88 Land of community value

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority –
 - (a) 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
 - (b) 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 community.

3. This appeal concerns land and buildings comprising the Shovels Inn, Hambleton, Lancashire. The Inn is long-established, tracing its origins to an ale house on the site in 1705. The present Inn dates from, at latest, the mid 19th century.

4. Wyre Borough Council ("the Council") received a nomination in September 2014 from an unincorporated association, concerning the listing of the Shovels Inn as an asset of community value under the 2011 Act. The decision to list was upheld, following a review, on 19 December 2014. Punch Partnerships (PTL) ("Punch") appeal that review decision. Both parties are content for the appeal to be determined without a hearing and I consider that, in the circumstances, it is appropriate for me to do so.

5. The land and buildings which are the subject of the listing comprise the inn building, its car park and other open areas, comprising a grass area, a beer garden and a children's play area. Punch has a pending planning application to construct a retail unit in the south east corner of the land. The footprint of this unit would extend over part of one of the grassed areas and a somewhat larger part of the present car park. Punch states that what it describes as the licensed premises, together with the beer garden, smoking area and children's play area would be "unaffected by the proposed development". There is, accordingly, no suggestion that the Shovels Inn would have to close as a pub.

6. The question, accordingly, is whether the requirements of section 88(1)(a) are met. It is common ground that, in determining that question, the appeal proceeds as a full re-evaluation.

7. Punch questions the validity of the nomination, which caused the Council to list. Nothing turns on this. I am fully satisfied on the materials before me that the Council checked the electoral register and confirmed that 68 of the 77 people that signed the nomination were listed on the electoral register for Wyre and therefore fulfilled the requisite local connection under the Asset of Community Value (England) Regulations 2012. Punch contends that there is no evidence that these individuals realise that, in fact, the Shovels Inn is not proposed to be closed as a pub, when they submitted their names. There is, however, no legal requirement for the Council to investigate that issue. There is nothing to show that any of these individuals was deceived. As is plain from section 88, an asset may be listed whilst it is still being used for the relevant community purpose.

8. Punch points out that the Council's letter of 26 September 2014 omitted the letters "PTL" and, thus, although sent to the correct address, did not comply with regulation 8 of the Regulations in that "all practical steps to give the information that it is considering listing the land" were not provided.

9. I am frankly at a loss to understand the point that is sought to be made. Insofar as it appears to be suggested that Punch instructed its solicitors later than what otherwise would have been the case, it has not been explained why that has anything to do with the question to be decided in this appeal.

10. Punch also appears to express disappointment that the Council decided to list as quickly as it did. Again, no explanation is put forward as to how that might affect my decision on this appeal. The same is true of criticisms levelled at the Council regarding inexact citation of provisions in section 88.

11. In connection with the review, as regards which Punch did not request an oral hearing, the senior solicitor conducting the review made two visits to the Shovels Inn; on the evening of 31 October 2014, when he witnessed a Halloween event in progress which included a fun fair on the south eastern part of the car park where it was noted that the car park and grassed areas were "full of adults and children"; and a visit on 11 December 2014, when he noted that there was a "psychic evening" being advertised outside the premises, and that inside the building was an events schedule advertising "a variety of events, including live bands and a forthcoming children's Christmas party".

12. Punch contends that the "evidence secured from these site visits" should not have been considered without the owner and other interested parties being given the opportunity to comment on it and to secure "representations" against the nomination of the premises as an asset of community value. Punch has now had that opportunity. So far as the fun fair was concerned, Punch asserts that this was a "one off event".

13. There is ample evidence before me that the Shovels Inn meets the requirements of section 88(1). It is used by the community as a pub, with all that that entails. The only real issue between the parties is just what comprises the Shovels Inn. Punch submits that the only part of the listed land and buildings that can properly be listed is what it describes as "the licensed premises". In Punch's Reply, reference is made to the licensing Act 2003. It is contended that the licensable activities of the Shovels Inn comprise the provision of regulated entertainment; the performance of live music (indoors); the playing of recorded music (indoors); and the sale of alcohol. The reply continues:-

"It is usually the case that those areas which are licensed for the provision of a licensable activity (activities) will be shown on a licensing plan (which is attached to a premises licence) as edged in red. Unfortunately the licensing plan in our possession is in 'black and white' but as the respondent will be aware (as the relevant licensing authority) it does not incorporate" any part of the premises save the ground floor. Punch's expectation is that the licensed area would not include the kitchen, toilets, private area, first floor of the premises, second floor of the premises, beer garden, smoking area, children's play area, car park or the grassed area.

14. The burden is on the appellant to prove its case. I do not consider that it is appropriate to engage in speculation as to what the plan does or does not show. In any event, I consider the point to be immaterial for the following reasons.

15. On the facts of this case, the attempt to confine the land/buildings to the “licensed premises” (even if they are as described by Punch) is misconceived. So far as living accommodation is concerned, the Regulations expressly provide that, this is, in effect, to be disregarded. More importantly, it is simply not possible rationally to contend that the community’s relevant use is confined to merely those areas where the sale of alcohol may take place or where the performance of music etc is permitted. The use which the community makes of the Shovels Inn manifestly extends to the outdoor areas, including the beer garden, smoking area and children’s play area. I also find, on the facts, that it extends to the car park and grassed area. So far as the car park is concerned, it is integral to the use of the relevant land by the community that individuals from that community be able to arrive and depart by car.

16. Even if this were not the case, I find that the evidence demonstrates that the car park and grassed area are used for relevant community events, such as the Shovels fun run, which has been in existence for 30 years, and which congregates on the car park. When the senior solicitor visited on 31 October, both the car park and grassed areas were “full of adults and children” for a Halloween event. Despite Punch’s attempt to categorise this as “a one off” event, in the context of the overall history of the Shovels Inn, I do not regard it or the fun run as in any sense *de minimis*. Bearing in mind the present uncertainty regarding the proposals for the construction of the retail unit, I find, as a fact, that it is realistic to think that such activities may continue in the next five years, as may, of course, the use of the beer garden, smoking area and children’s play area.

17. Although not relevant to the outcome of this appeal, I observe in closing that, in the event that planning permission is granted for the retail unit, it would be open to Punch to contend that a new planning unit has been created and, accordingly, to seek to have the Council remove that part of the land from the 2011 Act list.

18. This appeal is dismissed.

Peter Lane

Chamber President

Dated 2 June 2015