



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

Tribunal Reference: CR/2014/0014
Appellant: Martin Moat
Respondent: North Lincolnshire District Council
Second Respondent: Keadby and Althorpe Parish 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

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(whether or not in the same way) the social wellbeing or social interests of the local community.

- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –
 - (a) 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 interests of the local community, and
 - (b) 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 community.
- (3) The appropriate authority may by regulations –
 - (a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;
 - (b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.
- (4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.
- (5) In relation to any land, those matters include (in particular) –
 - (a) the owner of any estate or interest in any of the land or in other land;
 - (b) any occupier of any of the land or of other land;
 - (c) the nature of any estate or interest in any of the land or in other land;
 - (d) any use to which any of the land or other land has been, is being or could be put;
 - (e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to –
 - (i) any of the land or other land, or
 - (ii) any of the matters within paragraphs (a) to (d);
 - (f) any price, or value for any purpose, of any of the land or other land.
- (6) In this section –

“legislation” means –

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(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

“social interests” includes (in particular) each of the following –

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

“statutory provision” means a provision of –

(a) legislation, or

(b) an instrument made under legislation.”

3. Mr Moat, the appellant, is the owner of the Dolphin public house in Althorpe, North Lincolnshire. The present structure of the Dolphin dates from 1937. It is a large detached establishment set in significant grounds adjoining the A18 trunk road. Acting on the nomination of the Keadby and Althorpe Parish Council (“the Parish council”), North Lincolnshire District Council (“the District council”) on 3 June 2014 placed the Dolphin on the District Council’s list of assets of community value under the 2011 Act. A review of that decision was held by the District Council at the request of Mr Moat. The result of the review was to maintain the Dolphin on the list. Mr Moat appealed against that decision to the Tribunal. A hearing of the appeal took place at Lincoln County Court on 18 February 2015. Mr Moat appeared in person. Miss Alistari appeared for the District Council and Ms Leesa Murray spoke on behalf of the sub-group of the Parish Council, established in early 2014 to seek the retention of the Dolphin as an asset of community value. I am grateful to all three for their submissions.

4. The Dolphin has operated as a pub from 1937 until very recent times. According to the Parish Council, Mr Garbutt ran it successfully, until his ill-health caused the business to falter. Earlier, Mr and Mrs Moody had, again according to the Parish Council, enjoyed a good living there for over 18 years, providing a popular restaurant in the premises and maintaining a lively and vibrant pub trade. Mr Garbutt took over, following a less successful period, when the Dolphin had been run by managers. Mr Moat’s view of the Dolphin’s recent history as a pub is more negative. It is certainly the case that when he acquired it, the Dolphin had been empty for some two years. Mr Moat is frank that, even though he purchased the Dolphin as a pub (with ancillary living accommodation), his intention was to make it a family home. However, in response to requests from locals, Mr Moat reopened the Dolphin as a pub in December 2011. Under Mr Moat, the Dolphin traded as a pub for some two years. The evidence indicates that Mr Moat spent considerable effort in making refurbishments to the premises.

5. Mr Moat hired a chef and resumed the serving of food at the Dolphin. He advertised the Dolphin on signs, as well as on the internet and social media. The documentary evidence contains a number of testimonials to the food and general

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atmosphere in the Dolphin by those who came from outside Althorpe to patronise it.

6. The Parish Council's evidence, on the other hand, speaks of the indifferent quality of the food, the unpredictable hours when food was available and other difficulties involving an alleged lack of hospitality. The Dolphin closed around the end of 2013 when, according to accounts produced to the Tribunal by Mr Moat on the date of the hearing, the loss for that calendar year was £21,511.

7. Mr Moat applied for planning permission to convert the Dolphin into a residence, by closing the public sales area and dining room, as well as the Dolphin's gardens. Planning permission was refused by the District Council. On 11 June 2004 a planning inspector dismissed Mr Moat's appeal against that refusal. In her report, the inspector noted that Mr Moat said that the Dolphin was supported financially from his salary from another occupation, along with unpaid work by friends. Nevertheless, the Dolphin made severe losses and Mr Moat considered the pub was not viable. The inspector had no doubt that Mr Moat "tried to keep the business open". She concluded, however, that:-

"insufficient evidence has been provided to enable a meaningful assessment of the pub's viability. Whilst I understand that previous tenants had declared themselves bankrupt, no evidence as to the financial accounts of the business at this time has been provided. The appellant has submitted a balance sheet dated 31 December 2012 relating to the period which he operated the appeal property as a pub. This shows net liabilities of £21,511. The appellant also states that the business was put into liquidation in April 2014 with almost £40,000 declared as debts".

8. The inspector did not consider this evidence to be sufficient to demonstrate that the pub was no longer financially viable or profitable:-

"In the absence of any further information, such as financial accounts or an indication of net profits or liability levels which reflect the operation of the business over a sustained period, I cannot be satisfied that the pub is economically unviable as a business. I therefore find no conclusive indication that the business could not be a commercial proposition in the future, particularly given its success in the past."

The inspector did not consider that options for a continuation of the Dolphin as a pub had been actively pursued or explored:-

"It has not been proven that there is no longer a need for the building in any form of community use. Nor has it been demonstrated that the Dolphin Inn would be unable to continue as a pub under

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different ownership or management, and I cannot be assured that there would be no interest in the pub from prospective buyers or operators.”

The inspector then noted that the Parish Council had nominated the property as an asset of community value. She found that “there are few facilities in Althorpe where the Council regard the Dolphin to be a key village service.” In conclusion, she found that “the loss of an important local service is not justified”.

9. I have had careful regard to Mr Moat’s evidence, both written and oral. I have no doubt he sincerely feels that, having put a good deal of time, effort and money into the Dolphin, local people have failed to use it in sufficient numbers to make it economically viable for him to continue. Having considered all the evidence, however, I am in no doubt that the requirements of section 88 of the 2011 Act are satisfied in the case of the Dolphin.

10. There is abundant evidence that, in the recent past, the Dolphin operated as a place that furthered the social wellbeing or interests of the local community in Althorpe. Although Mr Moat has local connections, the demands of his other occupation mean that he is frequently abroad and did not follow the earlier fortunes of the Dolphin as closely as did the Parish Council. I therefore accept the evidence of the Parish Council regarding the contribution made to the local community by the Dolphin during the time of Mr Garbutt and Mr and Mrs Moody.

11. The main matter of contention is whether section 88(2)(b) is satisfied; namely whether it is “realistic to think that there is time in the next five years when there could be non-ancillary use of the [Dolphin] that would further (whether or not in the same way as before) the social well being or social interests of the local community”.

12. The recent history of the Dolphin is not, I find, sufficient to demonstrate that this question falls to be answered in the negative. Indeed, I have heard nothing to suggest that Mr Moat undertook the re-opening of the Dolphin as a pub, notwithstanding that, even at that time, he did not regard such a venture as commercially realistic. On the contrary, the evidence strongly indicates that Mr Moat genuinely considered the business model he put in place would be successful. He now believes that his failure, coupled with his view of the recent history of the Dolphin, is such that it cannot be said that the Dolphin can realistically be run as a pub.

13. I find as a fact that the evidence does not demonstrate this. It is no criticism at all of Mr Moat to say that he is, at least at present, on bad terms with the local community, whom he feels has let him down. On its side, the Parish Council, as indicated in the written materials and the evidence of Ms Murray, considers that there were failings in the way that the Dolphin was run under Mr Moat, which

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would not necessarily be replicated under different ownership. That was one of the conclusions of the planning inspector. Having examined all the evidence before me, it is also my conclusion.

14. The accounts belatedly produced by Mr Moat still cover only one year. I agree with what the planning inspector had to say about that matter. I have had regard to the opinion of Mr Moat's accountant, as contained in her letter of 17 February 2015, that "turnover would need to increase by approximately £50,000 per year which I do not see as possible due to the location and number of local customers". That is, however, in the nature of a bare assertion, even having regard to the accounts for 2013. It does not compel the conclusion that any other commercial operator would view the matter in the same way. Furthermore and in any event, what is realistic in terms of section 88(1)(b) can admit of more than one answer. In particular, on the facts, it is evident that it is realistic to conceive of a future for the Dolphin as a community-run not for profit enterprise. The sub-group of the Parish Council was formed in early 2014. I accept Ms Murray's evidence that the sub-group is actively engaged in investigating community grants that would be available for establishing the Dolphin as a not for profit venture. The sub-group has undertaken a valuation of the Dolphin, which is very considerably less than the price sought by Mr Moat. The sub-group's evaluation is £99,000, although they are working on a business case based on a sale price of £150,000.

15. The fact that Mr Moat regards that price as too low is in no sense determinative, given the fact that he has tried, and failed, to obtain planning permission for change of use. At present, the position is that Mr Moat cannot lawfully convert the Dolphin into a private residence. Against that background, it is, I find, realistic to think that Mr Moat may well decide to sell the Dolphin for a price which reflects its current lawful use.

16. There is no legal requirement for the Parish Council, or anyone else, to present a fully worked-out business case in order for the asset to remain on the list. Each case turns on its own facts. In the present instance, I am satisfied that the work undertaken by Ms Murray and her colleagues demonstrates that there is a level of community intent, which makes it more than fanciful that the Dolphin could once more further the social wellbeing or social interests of the local community.

17. Both sides made reference to a former pub known as the Barge at Keadby, the other village served by the Parish Council. Ms Murray is one of the owners of this establishment. I accept her evidence that the intention is to run it as a form of heritage venue and that, in particular, it is not intended for it to re-open as a pub serving alcohol. That leaves the way open for the Dolphin, once more, to resume the role it has played (with only short interruptions) for almost 80 years.

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18. I also note Mr Moat's evidence that he has considered opening the Dolphin as a plant nursery and café, possibly to be run by his children. A café could well be a use for the Dolphin that satisfies section 88(2)(b). In other words, the present position is plainly such that, besides the realistic prospect of the Dolphin reopening as a pub, it is also realistic to envisage it being used for some other form of social meeting-place, such as a café.

19. This appeal is dismissed.

Judge Peter Lane

Chamber President

Dated 24 March 2015