



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

Appeal Reference: CR/2015/0021

**Heard at Lincoln County Court
On 1 June 2016**

Before

JUDGE PETER LANE

Between

CURTIS SLOANE LTD

Appellant

and

BASSETLAW DISTRICT COUNCIL

First Respondent

ELKESLEY PARISH COUNCIL

Second Respondent

Representation

For the Appellant:	No appearance and no representation
For the First Respondent:	Mr S Wormold, solicitor
For the Second Respondent:	Mr N Oldbury

DECISION AND REASONS

Introduction

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.

Legislation

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.
 - (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 –
 - (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 the legislation.”
 - (7) Section 108 includes the following definitions:-
 - ““building” includes part of a building;
 - ...
 - “land” includes—
 - (a) part of a building,
 -”

The issues

3. The Robin Hood in Elkesley has operated as a pub since 1822. It closed in 2015, around the time of its sale by Enterprise Inns to the appellant. There are no other pubs in Elkesley, which has a population of just over 800.

4. On 18 March 2015, Elkesley Parish Council (“the Parish Council”) nominated the Robin Hood, together with its car park and outdoor garden, as an asset of community value. The nomination explained that the Robin Hood was the only pub within the community and had been at the heart of Elkesley for many years. It was regularly used for family celebrations, such as christenings and birthdays, as well as funeral wakes. Cider and music events as well as village bonfires and firework displays had been organised by the pub, which also had a number of teams playing dominoes, darts, pool and football. During the consultation of residents in connection with formulating the Elkesley Neighbourhood Plan, 78% of those responding indicated their support for the Robin Hood to be identified as a village asset. Residents regarded the pub as important, not just for their own purposes, but also as a facility for visitors.

5. Bassetlaw District Council (“the District Council”) decided to list the Robin Hood. The District Council concluded that the property met the requirements of section 88(2) of the 2011 Act. At the request of the appellant, the District Council held a review of the listing decision. The review took place on 23 October 2015. The decision was that the property should remain on the list.

6. The appellant appealed against that decision to the First-tier Tribunal. Although the appellant was content for the matter to be decided without a hearing, the Parish Council requested a hearing. This took place at Lincoln County Court on 1 June 2016. The appellant indicated that it did not intend to appear or be represented. The District Council was represented by Mr Wormold, solicitor, and the Parish Council by Mr Oldbury. Three other parish councillors and eleven residents also attended the hearing, but did not participate in the proceedings. I heard from Mr Wormold and Mr Oldbury.

The respective cases and submissions

7. The case for the appellant is essentially as follows. Enterprise Inns had marketed the Robin Hood for “five years” without being able to find a suitable tenant. The tenant who last ran the pub was unable to pay any rent due to low levels of trade. Whilst the pub was being marketed, no local members of the community or of the parish came forward to show any interest in acquiring it. Enterprise Inns, accordingly, had “no alternative but to close the pub and look for a buyer for the pub site” (bundle page 54). The appellant contended that during the purchase from Enterprise Inns it met with the existing tenant to offer him the pub on a “no rent” basis but he declined.

8. The appellant’s intention is to develop the site for residential purposes. The appellant considers that the nomination by the Parish Council is “simply to prevent us from redeveloping the site, rather than it being a genuine application to retain the building as a community asset” (bundle, page 56). The building has “very little historical importance”, having been extended numerous times over the years. At

page 57, the appellant makes reference to a “financial viability report” having been undertaken, showing that the pub “was not financially sustainable”. It does not, however, appear that any such report has been filed in connection with the appeal.

9. At page 143 of the bundle, we find a copy of a communication sent to residents of Elkesley. This states that following a public meeting on 26 October 2015, a steering group was established to look at ways that the Robin Hood might be saved. Reference is made to the identification in the Elkesley Neighbourhood Development Plan of the Robin Hood as one of a number of “community facilities”. The steering group undertook a questionnaire of residents in order to ascertain the level of interest in securing the Robin Hood as an asset of community value. The results of the survey were published in February 2016. Amongst other information, this showed thirteen people indicating that they were likely to use the pub daily, 43 two-three times a week and 53 weekly. 53 respondents indicated a willingness to assist with fund raising/working parties, ten with professional advice and 45 interested in volunteering.

10. Mr Wormold submitted that the District Council continued to consider the requirements of section 88(2) were met. He said that the original planning application submitted by the appellant for 22 dwellings on the site had been revised in February 2016, so as to make provision for 17 dwellings. The District Council’s planning officers had concerns regarding amenity and other issues, such that, as matters presently stood, they were likely to recommend to the planning committee that permission should be refused. However, discussions between the appellant and officers were continuing.

11. Mr Oldbury spoke to the Parish Council’s written materials in the bundle. He disputed that it had been evident to the community that the Robin Hood was on the market for five years. The tenant was continuing to run the premises as a pub during that time and no “for sale” signs had been present on the property.

12. The Parish Council had thought that identifying the Robin Hood as a valuable asset in the Neighbourhood Plan was enough to satisfy the requirements for listing as an asset of community value. When, however, it was realised that this was not the case, the Parish Council had put forward the nomination.

13. Mr Oldbury said that other parties than the appellant had, in fact, been interested in acquiring the Robin Hood. One person, a local builder, had visited it three times and even sold his house so as to be able to buy the pub and put his daughter in charge of it. The Parish Council had also had contact with other potential purchasers.

14. The public meeting, envisaged in the document set out at page 143 of the bundle, took place in March 2016, in conjunction with a meeting of the Parish Council. It had not been considered appropriate at this stage to start a fund raising exercise in order to acquire the Robin Hood. The Parish Council believed that the pub was viable as a

pub business, albeit one that might need to diversify into areas such as bed and breakfast (the pub having sufficient rooms for this purpose), as well as possibly opening as a café. Planning permission had been granted for a camping site on the land. This had been at the instigation of the previous landlord.

15. Not only was the Robin Hood useful to those visiting Elkesley as walkers etc.; it was of considerable significance to the villagers. The closest open pub was some 2.5 miles down the A1 (which does not have a footpath). The shortest route to the pub without venturing onto the A1 was some 4.1 miles. This route, however, had no street lighting or pavement. To take a taxi to the Robin Hood would cost around £10. The last bus in the village departs at 1815 hours, making it unable to be used for visiting neighbouring pubs in the evening.

16. Mr Oldbury vehemently refuted the appellant's assertion that listing under the 2011 Act had been sought by the Parish Council merely as a way of seeking to prevent residential development of the site. Mr Oldbury said that a perusal of the Neighbourhood Development Plan showed that residents were in favour of suitable residential development taking place in the village, such as at Yew Tree Road.

17. Mr Oldbury also made the point that during the last period of the pub's operation, trade had been badly affected by bridge works on the A1. These had resulted in closure of gaps in the central reservation between the carriageways, making it far more difficult to enter and leave Elkesley. The bridge works had commenced in 2013 and had lasted one and a half to two years.

18. Mr Oldbury concluded by saying that the Parish Council firmly believed that the pub could be viable as such. All it needed was the "right people". The Parish Council had not, he said, ever received a formal offer from the appellant, who said it had offered the community the Robin Hood (without the adjoining land) for £300,000. Mr Oldbury pointed out that the purchase price paid by the appellant was only £165,000 and that the building had inevitably deteriorated since that time, as a result of being unoccupied.

Discussion

19. The evidence plainly shows that the requirement of section 88(2)(a) of the 2011 Act is met. The Robin Hood was, in the recent past, used in a way that furthered the social wellbeing or interests of the local community. The issue to be determined is whether the requirements of section 88(2)(b) are met; namely, whether it is realistic to think that there is a time in the next five years when there could be use of the Robin Hood that would further social wellbeing or social interests of the local community.

20. I have had full regard to everything said by and on behalf of the appellant in the bundle of documents prepared in connection with the appeal. I find as a fact that the

District Council and the Parish Council have demonstrated that section 88(2)(b) is satisfied.

21. There is no reliable evidence to show that the pub was in permanent decline, at the time of its closure. I am satisfied that the bridge works described in evidence are likely to have had a serious temporary effect on its viability, which means that the situation in the period leading up to closure is not a reliable guide of how the Robin Hood may fare in the future. The evidence from the Parish Council demonstrates that previous recent landlords were able to run the pub with a degree of success. I accept the evidence from the Parish Council regarding interest from other potential purchasers at the time of the sale by Enterprise Inns. Being the only pub in Elkesley, coupled with the difficulties of travelling from the village to neighbouring pubs, clearly puts the Robin Hood in a relatively advantageous position.

22. Through the Parish Council and the steering group, to which reference has been made, the community has demonstrated a desire not only to see the Robin Hood reopen but also to use it. Although there may be an element of only truly appreciating an asset when it is threatened, I have no reason to doubt the genuineness of the responses made to the residents' survey regarding the future of the Robin Hood.

23. In all the circumstances, I do not consider that the appellant can draw anything positive from having offered the pub to the village for a sum of £300,000, without its land (including a car park). Given the price paid for the pub only recently beforehand, the offer was, at best, entirely unrealistic.

24. I bear in mind the current planning situation. As matters stand, it is clearly realistic to think that planning permission may be refused by the local planning authority. In such a scenario, it is realistic to think that pub use would resume, whether by the appellant or someone else.

Decision

25. On the totality of the evidence, I find that the Robin Hood and its adjacent land meet the requirements of section 88(2) for listing as an asset of community value. The appeal is accordingly dismissed.

Judge Peter Lane

Date: 27 June 2016