



**First-tier Tribunal
(General Regulatory Chamber)
Community Right to Bid**

Appeal Reference: CR/2018/0001

**Determined without a hearing
On 9 May 2018**

Before

JUDGE ANTHONY SNELSON

Between

PUNCH PARTNERSHIP (PML) LTD

Appellants

and

ARUN DISTRICT COUNCIL

First Respondents

and

CAMRA - ARUN AND ADUR BRANCH

Second Respondents

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

Introduction

1. The Henty Arms at Ferring, West Sussex ('the pub'), until 1927 called The New Inn, has served the local community since 1830 and trades successfully to this day.

2. This is the appeal of Punch Partnership (PML) Ltd, the freehold owners, against the decision of the First Respondents, Arun District Council, given in a document dated 12 January 2018, declining to review their decision of 6 September 2017 to include the pub in their list of assets of community value.
3. The Second Respondents are identified as CAMRA – Arun and Adur Branch. They claim to have made a valid nomination of the pub resulting in the listing decision under challenge. There is a dispute between them and the Appellants as to whether they have any legal status and as to whether, even if they have such status, the nomination can properly be seen as theirs rather than that of the parent organisation, Campaign for Real Ale Ltd, a company limited by guarantee ('CAMRA').
4. In *BHL v (1) St Albans City & District Council (2) Verulam Residents Association* [2016] UKUT 0232, Upper Tribunal Judge Levenson offered this summary of the nature and effect of the assets of community value ('ACV') legislation:
 3. **The Localism Act 2011 requires each local authority to keep a list of land (including buildings) in its area which is of community value. The effect of listing (which usually lasts for five years) is that generally speaking an owner of listed land wishing to sell it must give notice to the local authority after which any community interest group has six weeks in which to ask to be treated as a potential bidder. If any such group does so the sale cannot take place for six months, during which the group may come up with an alternative proposal. At the end of the six months it is up to the owner whether to sell and to whom and on what terms. There are arrangements to compensate owners who lose out financially in consequence of the listing.**
5. The appeal came before me for consideration on paper on 9 May this year, the parties having stated that they were content for the matter to be decided without a hearing. I was satisfied that the dispute could be justly determined in that way.
6. I have had regard to the documents in the substantial bundle in so far as they appear to be relevant to the appeal (many are germane only to points which are no longer in issue). In addition, I have taken into account the Second Respondents' 'Response to the Appellants' Reply of 18 April 2018' and accompanying documents, sent under cover of a letter from Mr Bruce Webster to the Tribunal dated 3 May 2018.

The Legislation

7. The statutory scheme is laid out in the Localism Act 2011 ('the Act') and the Assets of Community Value (England) 2012 ('the Regulations') made thereunder. The Act, s88 includes:-

(1) For the purposes of this Chapter ... a building or other land in a local authority's area is land of community value if in the opinion of the 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 social 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.

8. In s89 the procedure for listing is explained:

- (1) Land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value only –
 - (a) in response to a community nomination, or
 - (b) where permitted by regulations made by the appropriate authority.
- (2) For the purposes of this Chapter "community nomination", in relation to a local authority, means a nomination which –
 - (a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and
 - (b) is made –
 - ...
 - (iii) by a person that is a voluntary or community body with a local connection.

9. Under the Act, s90(2) and (3) a local authority must consider any 'community nomination' and must accept it if the land nominated is within the authority's area and is of community value (under s88). If the nomination is accepted the authority must cause the land to be included in its list of assets of community value (*ibid*, subsection (4)).

10. The Act, s92 makes provision for the right of owners of land included in a local authority's list of assets of community value to seek a review of the listing decision.

11. The Regulations define 'local connection' (for the purposes of 89(2)(b)(iii)) in reg 4, as follows:

- (1) For the purposes of these regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if –
 - (a) the body's activities are wholly or partly concerned –
 - (i) with the local authority's area, or
 - (ii) with a neighbouring authority's area;
 - (b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied –
 - (i) for the benefit of the local authority's area, or
 - (ii) for the benefit of a neighbouring authority's area; and
 - (c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.

...

(3) In paragraph (1)(c), “local member” means a member who is registered, at an address in the local authority’s area or in a neighbouring authority’s area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts.

12. Reg 5, concerned with voluntary or community bodies, provides:
(1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), “a voluntary or community body” means –

...
(c) an unincorporated body –
(i) whose members include at least 21 individuals, and
(ii) which does not distribute any surplus it makes to its members ...

13. Reg 11 includes:

(1) An owner of listed land may appeal to the First-tier Tribunal against the local authority’s decision on a listing review in respect of the land.

In *Gullivers Bowls Club Ltd v Rother District Council* (CR/2013/0009) Judge Nicholas Warren, immediate past President of the GRC, held (Decision Notice, para 18) that appeals under reg 11 take the form of a complete rehearing. I respectfully agree with this guidance and adopt it.

The Appeal

14. Although the notice of appeal makes numerous points, the Appellants base their appeal on three specific grounds. These are set out in the appeal document at paragraph 12 as follows:

- (i) The Nomination was made by the Campaign for Real Ale Ltd, which has no “local connection” capable of satisfying s89(2)(b)(iii) of the Act.
- (ii) Alternatively, the nomination was made without the authority of the members of the “branch”, and was therefore not a community nomination.
- (iii) There is no prohibition against the branch distributing a surplus to its members, nor does the Nominator apply any surplus for the benefit of the Council’s area, or the area of a neighbouring local authority.

Ground (iii) was raised after the review and therefore does not feature in the detailed decision issued by the reviewing officer.

Analysis and Conclusions

Who made the nomination?

15. The Appellants begin with the surprising assertion that the Arun and Adur branch of CAMRA (‘the branch’) does not exist. Reliance is placed upon the articles of association of CAMRA and the Second Respondents’ constitution (which is, I understand, a model constitution distributed by CAMRA to all its branches). These documents and other evidence put before me show several

things. First, CAMRA has the power to establish and support branches, whose objects are the same as its own. Second, any member of CAMRA living within the area of the branch is allocated to the branch, but may “opt out” and request to be transferred to another branch. Third, CAMRA is empowered to exercise control over the way in which branches operate. For example, the constitution document stipulates that the branch must observe regulations for branches laid down from time to time by the National Executive of CAMRA and is bound by any decision of a general meeting of CAMRA or of its National Executive. Likewise, a branch may be wound up by a decision of the National Executive or by a resolution at a Special General Meeting. Fourth, the First Respondents have a membership count exceeding 700 names (I will record further facts relating to the branch as necessary in due course).

16. I am satisfied that there is nothing in the argument that the Second Respondents do not exist. No authority is cited for the proposition that a branch cannot have legal personality unless it is independent of the ‘parent’ body. A moment’s reflection shows the notion to be unfounded. It is self-evident, for example, that a subsidiary company, wholly owned and controlled by the ‘parent’ company, exists in law and has power to transact business and enter into legal relationships with other entities. The Appellants’ submission also runs counter to an adjudication of the immediate past President of the General Regulatory Chamber, Judge Peter Lane (now Lane J) in *Hamna Wakaf Ltd-v-London Borough of Lambeth & another* CR/2015/0026 (judgment given 19 July 2016), in these terms:

89. I reject the appellant’s contention that CAMRA’s Branches cannot legally be distinguished from the Campaign for Real Ale Limited, for the purposes of regulation 5. It is clear from the materials to which I have referred, especially the model Branch Constitution and the internal memoranda, that the South West London Branch has an identity as an organised group of people in South West London, with the common functions described in the nomination form. That form also specified that 358 members of the Branch live in Lambeth.

I see no arguable ground for distinguishing the instant case or for departing from Judge Lane’s reasoning, which appears, with respect, to be entirely compelling.

17. At the review stage a lot of energy was devoted to dealing with the contention that the nomination, if made by the Second Respondents at all, had been presented by them as agents for CAMRA. That argument was fully examined by the review officer who, in line with the guidance in the *Hamna Wakaf* case, approached the First Respondents for further information which satisfied him that the nomination had been made by the Second Respondents in their own right and was valid under the terms of the applicable legislation. Reading the notice of appeal, I do not understand the Appellants to be raising the ‘agency’ argument afresh. In my view, they have good reason to abandon that line of attack. Had it been persisted with, I would unhesitatingly have rejected it. In my view, the original nomination was clear enough despite the fact that the

wrong box was ticked on the form. In any event, any doubt was entirely laid to rest through the additional material collected by the review officer. In short, I fully agree with his decision on this aspect. There was no agency, actual or apparent. The nomination was the act of the branch.

If the nomination was by the Second Respondents, was it valid?

18. This part of the case begins with the second ground of appeal, which contends that the nomination was made without the authority of the branch and that it was “therefore” not a community nomination. The logic appears to be that a nomination without authority is a nullity and accordingly cannot satisfy the statutory requirements of a community nomination.
19. In my judgment there is no foundation for the challenge based on want of authority. It rests on mere assertion. The idea that the fact that the nomination exercise was handled by a small number of individuals justifies the conclusion that they were acting without authority strikes me as more than a little peculiar. It is in the nature of things that organisations allocate tasks to individuals and do not attempt to perform them collectively. As the evidence overwhelmingly shows, that is what happened here. The fact that the model constitution requires the branch to operate through a committee does not mean that every decision must be taken by the committee. There is, to my mind, not the first beginnings of an argument that the nomination was unconstitutional, let alone that it was a nullity. I find as a fact that the nomination process began in December 2015 when a member of the Second Respondents, Mr Peter Stone, contacted CAMRA expressing interest in a nomination of the Henty Arms. Mr Tyler Hanley of CAMRA then forwarded the appropriate forms to the then Chairman of the branch, Mr Tim Walker, who approved the proposed nomination and passed the paperwork to Mr Bruce Webster, Membership Secretary and Campaign Officer. It was agreed that Mr Stone would be named as the ‘Lead Nominator’. Mr Webster, who had considerable experience, assisted in the process. Many supporters signed the nomination forms, of whom a sizeable proportion identified themselves as CAMRA members. The vast majority had local addresses. One naturally infers that all or most of the CAMRA members were members of the Second Respondents. Progress of the application was discussed at branch meetings in and after February 2016 (17 months before it was presented to the First Respondents). Shortly after it was presented, Ms Christine Bardwell of the First Respondents wrote to the branch asking for clarification as to the identity of the nominator. Mr Webster replied by an email of 13 July 2017 stating that he had been asked by the branch to assist Mr Stone and that, “he and the branch” were the “nominating person and group”. There is no evidence of any opposition on the part of any branch member to the nomination of the Henty Arms. In the unremarkable story of this ACV exercise, I find nothing which calls into question the authority of Mr Stone and Mr Webster in taking it forward.

20. Next the Appellants question the validity of the nomination on the basis that there is no “valid prohibition” against a distribution of any surplus to members (grounds of appeal, para 45). This is said to offend against reg 5(1)(c)(ii). It is an agreed fact that the Second Respondents’ constitution contains no express prohibition against the distribution of any surplus to members, but I see nothing in the statutory language to require anything of the sort. As Judge Nicholas Warren pointed out in *St Gabriel Properties Ltd-v-London Borough of Lewisham & another* CR/2014/0011,

There is no requirement ... for an unincorporated body within reg 5(1)(c) to even have a written constitution; let alone a further requirement that a particular clause should be included.

What the legislation requires, in my view, is only that, the body *does not* distribute any surplus to its members. I find as a fact, in reliance upon the evidence placed before me (including the statements of Mr Webster and Mr Peter Brereton), which the Appellants are in no position to challenge, that the Second Respondents do not distribute any surplus to their members and have not done so.

21. The Appellants then appear to say (grounds, para 50) that the nomination is invalid on the basis that the Second Respondents do not apply any surplus for the benefit of the First Respondents’ area or that of the neighbouring local authority (see reg 4(1)(b)(i) and (ii)). This is not one of the three grounds identified as the basis of the appeal in para 12 of the appeal document (see above). In any event, I am satisfied that there is nothing in it. Again, the case is based on assertion or, perhaps, no more than putting the Second Respondents to proof. The facts of relevance here were carefully explored at the review stage, when it was explained that any surplus is used in part to fund the next year’s Worthing Beer Festival (held in a neighbouring local authority area), the free publication (*Sussex Drinker*), circulated within the First Respondents area and neighbouring local authority areas, and certain local charitable causes, with the balance being returned to CAMRA. I accept as correct the information given to the review officer and on that basis this objection to the nomination also necessarily fails.
22. Somewhat faintly, the Appellants next seem to persist with another argument run unsuccessfully on review, challenging the proposition that the Second Respondents have demonstrated that they had as many as 21 members and, in particular, 21 ‘local’ members (see regs 4(3) and 5(1)(c)(i)). Here again, the point is not identified in para 12 of the grounds where the three key issues are spelled out. But I will not exclude it on any technical ground. I simply find that it has no merit. I have already made a finding of fact that their membership exceeds and all relevant times exceeded 700. In his decision, the review officer noted the information supplied by the Second Respondents, namely that, as at 31 October 2017, the membership of the branch stood at 762

individuals, of whom 281 had addresses entirely within the area of Arun and neighbouring districts. In my judgment it is overwhelmingly likely that the number of local members greatly exceeds the statutory minimum of 21.

Result

23. For the reasons which I have given, the appeal must be dismissed.
24. Although pressed with immense energy and determination, I am satisfied that this appeal is entirely free of merit. It is founded on an unduly narrow and unrealistic interpretation of legislation which, it should be remembered, was designed to be accessible to citizens from all walks of life, with or without legal representation, as a means of enabling landowners and communities to grapple with the substance of local issues that matter to them. It would be unfortunate and contrary to Parliament's intention if this jurisdiction became mired in technicalities and procedural points - and all the more unfortunate if appeals routinely resurrected arguments which have been fully debated and rejected in earlier cases.

Signed

Judge of the First-tier Tribunal
Date: 7 June 2018