



Neutral citation number: [2024] UKFTT 442 (GRC)

Case Reference: CR/2023/0006

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

**Heard by Cloud Video Platform  
Heard on: 14 May 2024  
Decision given on: 30 May 2024**

**Before**

**JUDGE NEVILLE**

**Between**

**MR ANDREW TARLING**

Appellant

**and**

**(1) SOMERSET COUNCIL  
(2) SAVE THE HALF MOON GROUP**

Respondents

**Representation:**

For the Appellant: In person

For the Respondent: Mrs A Kershaw-Moore, solicitor

For the Second Respondent: Mr Toby Butler, chairman of Save the Half Moon Group

**Decision:** The appeal is dismissed.

**REASONS**

**The Half Moon Inn**

1. This appeal concerns a public house in the small village of Horsington, Somerset. The pub was licenced in 1775, but records of an alehouse go back another hundred years. By 1795 the pub was named the Half Moon Inn, and for the next two centuries it provided village residents with refreshment and a place to meet one another.
2. In 1991 the Half Moon Inn had been closed for a year, but was then purchased by the Tarling family. A new restaurant, kitchen and lodgings were built. A skittle alley was

installed in 1991 and the pub hosted seven local teams in four different skittles leagues, three teams in the Wincanton Darts League, and was frequented by Horsington Cricket Club. It played a key part in several village festivals in the 1990s that raised funds to repair the local pond and sluice gates, and the Golden Jubilee street party in 2012. A new restaurant, kitchen and lodgings were built in the 2000s, and hosted overnight guests working at nearby Thales and diners from a nearby country house rental accommodation. Its function room was used by the community for wedding receptions, wakes, birthdays and the like.

3. By the latter part of the last decade the Half Moon Inn's fortunes had waned. The local skittles leagues had closed or severely reduced in size, and the darts league reduced from 14 teams to 5, none of which were in Horsington. The function room had not hosted a wedding reception since 2015, the last karaoke was heard in 2017, and in 2019 only one band performed. Mr Tarling attributes this to increased energy prices and operating costs, and the cost of living and lifestyle changes reducing custom. The building is Grade 2 listed and expensive to maintain, some parts of it dating from the seventeenth century and others from the Georgian and Victorian periods.
4. The restrictions arising from the Covid-19 pandemic were the last straw for Mr Tarling. On 30 October 2020, after nearly thirty years, he served his last pint and closed the pub's doors. The Half Moon Inn has been closed since. Mr Tarling and his family continuing to live in the residential accommodation, and have made a success of two local ice cream parlours.

### **Registration as an Asset of Community Value**

5. Pursuant to the Localism Act 2011, all local authorities maintain a list of Assets of Community Value ("ACV"). The criteria for inclusion as an ACV are provided by section 88. Either:

Under subsection (1):

- (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.

Or, under subsection (2):

- (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.
6. Listing a building or land as an ACV means that when it is put up for sale, a six-week period begins during which a community group can express an interest in putting together a bid to buy it. If one does, then this triggers a six-month moratorium to give them time to do so. After the moratorium expires however, the ACV can be sold as the owner pleases. There is no requirement that it be sold to the community group or on any particular terms. There is provision in the Act for compensation to be paid to the owner by the local authority for any loss or expense which would be likely not to have been incurred if the land had not been listed. As well the Act, the Assets of Community Value (England) Regulations 2012 set out further procedural and substantive requirements.
  7. On 26 January 2023 a group of local residents, 'Save the Half Moon', nominated the Half Moon Inn as an ACV. There is no question that the nomination was valid. The responsible local authority was then South Somerset District Council. Notification was given to Mr Tarling as the owner of the Half Moon Inn. In a decision dated 21 February 2023, South Somerset District Council decided to include the Half Moon Inn in its list of ACVs.
  8. On 24 February 2023, Mr Tarling exercised the right under regulation 16 to request a review of that decision by a council officer of "appropriate seniority who did not take any part in making the decision". Schedule 2 to the regulations required the local authority to complete that review within a period of eight weeks or such later deadline as may be agreed. Unfortunately, the review was not completed by the expiry of the eight week deadline, which coincided with South Somerset District Council (together with three other District Councils and the County Council) being incorporated into the new Somerset Council unitary authority on 1 April 2023. An extension to 16 June 2023 was agreed with Mr Tarling, which was also missed. The review was eventually concluded on 18 October 2023, and the decision upheld.

## **The appeal**

9. On 1 November 2023, Mr Tarling exercised his right of appeal to the Tribunal. The nominating group, Save the Half Moon, was subsequently added as a party to the proceedings. The appeal was heard by video, all participants connecting remotely. The documents to be considered were agreed as comprising a joint hearing bundle, the witness statement of David Crisfield that had mistakenly been omitted from it, and a bundle of authorities. The pub was also viewed during the hearing on Google Maps and Streetview. Mr Tarling spoke to his case first. For Somerset, I then heard submissions from Mrs Kershaw-Moore and evidence from David Crisfield. For the Save the Half Moon Group, I heard submissions from its chairman Mr Butler, and evidence from member and local resident Liela Moss. Each party was given the opportunity to ask questions of anyone who had given evidence. I have taken careful

account of everything said at the hearing and all the documents provided, but shall only set out in these reasons what is necessary to understand the reasons for my conclusions.

## Issues

10. As the pub is no longer open, the result of the appeal depends on whether the two conditions at section 88(2) have been fulfilled. The Tribunal must therefore answer these questions:
  - a. Was there a time in the recent past when an actual use of the pub (that was not an ancillary use) furthered the social wellbeing or interests of the local community?
  - b. Is it realistic to think that there is a time in the next five years when there could be non-ancillary use of the pub that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community?
11. If the answer to both questions is yes, then the appeal will be dismissed. If not, the appeal will be allowed.
12. It was common ground at the hearing before me that these questions are considered by the Tribunal afresh. Appropriate weight should still be placed on the views of the local authority as the body with the institutional competence and relevant expertise in making such decisions.
13. After drafting this decision I have dealt with another appeal in which I concluded that the correct approach to an appeal under regulation is not purely *de novo*, and is akin to that expressed by Lane J in Cook v General Medical Council [2023] EWHC 1906 (Admin):
  - “20. The relevant legal principles this court must follow in deciding an application of this kind are essentially as follows. The court must disturb the decision of the IOT only if satisfied that the decision is "wrong". This does not mean that the court is confined to acting only if a public law error is identified, such as would be the position on judicial review. The way in which the principle operates so as to prevent an unconstrained "merits" review is by requiring this court to give weight to the views of the specialist Tribunal.
  21. Although arising in a different statutory context, it is instructive to note what Andrews LJ has said recently in Waltham Forest LBC v Hussain & Ors [2023] EWCA (Civ) 733 at paragraph 64:
 

" 'Wrong', as Upper Tribunal Judge Cooke explained in Marshall v Waltham Forest LBC [2020] UKUT 35 (LC) means in this context that the appellate tribunal disagrees with the original decision despite having accorded it the deference (or 'special weight') appropriate to a

decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions. It does not mean 'wrong in law'. Put simply, the question that the FTT must address is, does the Tribunal consider that the authority should have decided the application differently?"

14. I have not found it necessary to seek further legal submissions on the effect of any difference in that approach – even if it differs in principle, I am satisfied that it would make no difference to the outcome of this appeal.
15. Any relevant facts are found according to the standard of the balance of probabilities. I have not found it necessary in this case to resort to any formal burden of proof: Verlander v Devon Waste Mgt [2007] EWCA Civ 835 at [18]-[19].
16. Other issues have been raised that the Tribunal cannot decide:
  - a. First, Mr Tarling has raised the issue of compensation. Under regulation 17 the Tribunal only has jurisdiction to consider compensation “where a local authority has carried out a compensation review”, and no such review has been carried out.
  - b. Second, Mr Tarling complains about the procedure followed by Somerset in listing the pub, its delay in conducting the review (months beyond the statutory time limit) and the suitability of the reviewer. The Tribunal has no jurisdiction to afford redress for any of these matters, the legislation provides no specific consequences for breaching its provisions, nor are these complaints otherwise determinative of the appeal – the outcome depends on the answers to the questions posed above. I do accept that when answering those questions, failures by Somerset may be relevant to the weight that ought properly to be attached to their views.
  - c. Third, in his closing submissions Mr Tarling queried whether Save the Half Moon’s stance that it would not put forward a bid itself carried any legal consequence. It does not, there being no requirement in the Act or Regulations that the voluntary or community body must actually propose to bid for the land itself. The lack of such intention is still a relevant factor in answering the question on future use, but no issue arises concerning the validity of the nomination.

### **Community value in the recent past**

17. Everyone accepts that the usage described in paragraph 2 above furthered the social wellbeing or social interests of the local community. Mr Tarling disputes that this should be considered as the recent past. There is no binding authority on what constitutes the ‘recent past’ for the purpose of s.88(2)(a). Somerset adopts a yardstick of five years. While I am sympathetic to the economy and predictability of applying a simple test, this runs contrary to the legislation. Parliament chose to specify a fixed period of five years for future use, so must be taken as having left the phrase ‘recent

past' deliberately open to contextual application. It must therefore depend on all the relevant circumstances. Such a contextual approach informs the account to be taken of the consequences arising from the Covid-19 pandemic; it was an exceptional interruption of the community's ability to come together, especially in hospitality venues.

18. Mr Tarling observes that since the pub's closure, there has been "the pandemic, the war in Ukraine, the cost of living crisis, 14 consecutive interest rate rises by the Bank of England and a sharp rise in inflation, all of which have cut a swathe through the hospitality and many other industries". I agree that time in the present context is more than simply a linear quantity, and that its measure includes considering how circumstances have changed. I also take account of Mr Tarling's evidence that community use of the pub diminished in the years before closure, and in particular from 2018. It would be wrong, however, to apply a minimum level of community use when there is no such requirement in the legislation. Any substantial furthering of the social wellbeing or social interests of the local community will be enough, regardless of whether Mr Tarling was still able to turn a profit. It is in the nature of public houses that providing a place for socialising, leisure and respite from home and work for even a small number of people may still further social wellbeing.
19. I further consider that the length of time the pub operated beforehand is relevant to recency, without impermissibly conflating the two questions posed by section 88(2). A pub being open for over 200 years (save for short interruptions) gives it a permanence and significance in the structure of the local community. This is shown in the way that Save the Half Moon group describe the pub's closure as having created a "distant and fractured feeling in the community".
20. Ultimately however, over-elaborate analysis of recency risks obfuscating the actual test. 'Recent' is an everyday word that calls for an ordinary, everyday assessment. I agree with Judge O'Connor in Roffe v West Berkshire Council & Winterbourne Parish [2021] UKFTT CR-2019-0010 (GRC): "it is not for the Tribunal to bring precision to the past-condition when Parliament has deliberately chosen to using precise language". Considering all the relevant circumstances, I find that the evidence shows that the pub furthered the social wellbeing and social interests of the local community until its closure in 2020, albeit not to the same extent as in its heyday. Most people would describe this as a recent event despite the tumult since, and so do I. The answer to this first question is yes.

### **Future use**

21. Applying section 88(1)(b), is it realistic to think that there is a time in the next five years when there could be non-ancillary use of the pub that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community?
22. In R. (TV Harrison CIC) v Leeds School Sports Association [2022] EWHC 130 (Admin), Lane J reviewed several authorities concerning section 88(1)(b), including as follows:

30. In Gullivers Bowls Club Ltd v Rother District Council and Anor (CR/2013/0009), Judge Warren heard an appeal by Gullivers Bowls Club Ltd, the owner of land used as a bowls club, which appealed against the inclusion of its land in the statutory list, following nomination by a Community Association. Judge Warren held:

- "11. Turning to the future condition in Section 88(1)(b) Mr Cameron [representing the Bowls Club] submits that the existing bowls club has no realistic prospect of continuing. He points to the poor state of the buildings and the finances and relies on a report prepared by GVA. This finds that Gullivers is not commercially viable. Mr Cameron submitted that since listing lasts for five years, my starting point in considering whether the future condition was satisfied, should be whether the bowls club could continue in existence for that length of time.
12. I do not accept that the statute requires me to foresee such long-term viability. Indeed, it seems in the very nature of the legislation that it should encompass institutions with an uncertain future. Nor, in my judgment, is commercial viability the test. Community use need not be and often is not commercially profitable.
13. On this issue, I accept the submissions made by Mr Flanagan. Gullivers may be limping along financially but it still keeps going and membership is relatively stable. Of course it is possible that something could go drastically wrong with the buildings and Gullivers would not have the capital to repair them; but that has not happened yet and, in an institution that has lasted for 50 years, it would be wrong to rule out community spirit and philanthropy as resources which might then be drawn on. In any event, should the site cease to be land of community value, Rother would have power to remove it from the list."

31. In Worthy Developments Ltd v Forest of Dean District Council and Anor (CR/2014/0005), Judge Warren dismissed the appeal of a developer, which had bought a former pub known as the "Rising Sun" outside Chepstow, and wished to build two four-bedroomed houses on the site. A planning application to that effect had been refused but was likely to be appealed. The respondent accepted nomination by the "Save our Sun Committee" of the land and building comprising the pub. On the issue of section 88(1)(b), Judge Warren held:

- "17. In respect of the future condition, Worthy Developments Ltd asked me to have regard to their intention to develop the plot to provide two houses. I take that into account although I balance it with the fact that they have not yet obtained the necessary

planning permission. I also take into account the remoteness of the public house which must compound the general malaise affecting public houses nationally.

18. The written submissions ask me to consider which was the more likely to happen, that planning permission should be obtained and houses be built, or that the building be revived as a pub? In my judgment, however, to approach the issue in this way is to apply the wrong test.
  19. I agree with the council. The future is uncertain. Worthy Developments Ltd may or may not obtain their planning permission. They may or may not sell the land. The Save our Sun Committee may or may not see their plans reach fruition. It remains still a realistic outcome that The Rising Sun might return to use either as a traditional pub or as a pub/shop/community centre as envisaged by the committee.
  20. My conclusion in this respect is reinforced by the pledges of support and petitions gathered by our (sic) Save our Sun Committee. It is true that they have not yet made an offer with a firm completion date but their proposals are not fanciful. It is enough that return to use as a pub or some other venture furthering the social wellbeing or interests of the local community be realistic."
23. Lane J held that Judge Warren's interpretation of "is it realistic to think" was correct, emphasising that the legislation does not require a potential future use to be more likely than not to come into being, in order for it to be realistic.
24. In the nomination, the arguments made by the Save the Half Moon group include the following:
- a. There has been a large influx of new young families into the village in the last two or three years, and nowhere to meet that can be easily walked to with children. Other pubs in the wider area successfully offer daytime teas, coffees and lunch menus, and so could the Half Moon Inn. Likewise, the ageing residents of the village unlikely to be able to access other venues that can only be reached by car.
  - b. So popular were the skittles and darts teams in the past, they could surely be re-established. The function room remains intact and the village "now has many professional musicians, artists, film makers, set designers, all of whom would love to have a venue to use".
  - c. There is no local shop in the village, and a small part of the building could open for a short time in the morning to sell "basic or artisan supplies - bread, milk, cheese, etc".



- d. Beer from small and microbreweries is now very popular and the pub could increase its commercial viability by hosting beer and food festivals from local suppliers come out that would draw in paying customers from further afield.
25. The group suggests that Mr Tarling did not make the most of such opportunities, and moreover that his attitude to customer service was a significant contributor to reduction in community use and custom in latter years. Prospects for the next occupier would be brighter. A number of letters in support are provided, which I take into account.
26. Mr Tarling argues that the Half Moon Inn is no longer viable as a pub, and that no other community use for it has seriously been put forward. I can fairly summarise his case as follows.
- a. First, Mr Tarling points to the high cost of repairs. In his grounds of appeal he estimates that investment in excess of £1 million would be required. This figure is not broken down, but in his oral evidence he explained that the immediate priority is the roof. His survey when buying the pub 32 years ago had said that the roof needed replacing. Such is its state of repair now that it leaks water and cannot be insured, precluding commercial use. The roof is listed, dates from around the year 1800, and has eleven elevations with original tiles and elm purlins. It had been patched here and there, but replacement is now necessary. There are only two roofers in the South-West who could bring it up to standard, and he had been quoted more than £40,000 just for the scaffolding. In his Reply, he estimates that the total job would take over five years and cost over £300,000 plus VAT. Modernisation and refurbishment would be an additional major cost.
  - b. Second, Mr Tarling repeats his case on viability. Costs have risen and custom declined. Recent extension of the minimum wage to 18-20 year olds means a 14.8% wage increase that will hit hospitality particularly hard. The wage bill of a busy viable pub would be around £3,000 per week together with utility costs of £700 per week. Mr Tarling cites a recent Sunday Times article to show that the average profit on a pint of beer is now 12 pence – less than half of the 2018 figure.
  - c. Third, there is another pub, the White Horse, just outside the village and this competition, together with the lifestyle and social changes from the past few years makes it unlikely that anyone would find the expenditure described above worthwhile. If there are customers who truly wish to walk to a pub, they already walk to the White Horse.
  - d. Fourth, Mr Tarling casts doubt on whether some of the supporters would realistically patronise the pub as much as they now claim – what, he asks, was stopping them when it was still open? Why did it take them so long to nominate it as an ACV?

- e. Fifth, Mr Tarling raises doubts as to the likelihood of someone running a shop from the pub, or of people travelling from far afield to visit it
  - f. Sixth, Mr Tarling states that he has no intention of selling the Half Moon Inn at the sort of price available for it to be run a pub. He and his family will simply continue to live there.
27. Mr Butler observed that none of Mr Tarling's estimates on building repair cost and time are substantiated by a survey or any confirmation from the contractors who would be involved, and nor is the headline figure of £1 million explained. I accept Mr Tarling's estimate of the likely cost of replacing the roof, as he explained that he has sought broad quotes and there is no reason to think that he has been anything other than candid in his evidence. I am unwilling to accept his estimate of five years duration for the works. This is a very long time to replace a roof, and the breakdown provided assumes surprisingly lengthy periods for individual steps without any explanation in support. Nor has there been any explanation as to how the pub could lawfully operate as recently as October 2020 but now requires a complete replacement of the roof before it can do so again. There is a possibility that lesser works might suffice. In the absence of being provided with any survey showing that the roof requires complete replacement before the building can be publicly open, it is enough to find that the roof stands as one of the impediments to future community use, and that building costs overall will be the low hundreds of thousands of pounds and make a modest contribution to delay. I do accept the general proposition that trading conditions in hospitality are difficult, for the reasons given by Mr Tarling.
28. I agree with Mr Tarling that the nomination's examples of why the pub would be popular, such as the shop and use of the function room by film makers and set designers, may be somewhat rose-tinted. But weight must also be afforded to the number of signatures obtained in such a small village and the clear strength of feeling behind the group's efforts. The delay in nomination is readily explained by many pubs being closed during that time simply as a result of the pandemic, when it would not occur to locals that a nomination might be necessary.
29. In other First-tier Tribunal decisions it has been held that while the views of the landowner are relevant, they cannot be decisive. If listing could be resisted solely by a landowner stating that they would not countenance a use that satisfies the Future Condition, then the entire statutory scheme would be undermined. While not bound by such analysis, I agree with it. In this case, I find that Mr Tarling *will* accept a suitable offer for the Half Moon Inn that comes from a company who wishes to run it as a pub. Insofar as disclosed by the correspondence, he held out from pursuing a sale to a company called Remarkable Pubs in 2021 because he thought he could get more if the pub and land were sold for residential development. Yet two years later, there is no evidence that any progress has been made towards selling the land to residential developers, or that the substantial planning and building obstacles have been addressed. Meanwhile, Mr Tarling continues to live under a leaking roof that he cannot afford to make good. Below, I give my reasons for finding that a suitable offer from a pub company is a realistic possibility.

30. Save the Half Moon now points to interest by Remarkable Pubs. It is a family business that owns seventeen “carefully restored” pubs in London. One of its directors, Liela Moss, lives in Horsington. In 2021, she corresponded with Mr Tarling about buying the Half Moon Inn but these negotiations never moved beyond a preliminary stage. The company is still interested, and its chairman (and Ms Moss’s father) Robert Thomas has written a recent letter confirming that funds are available. He goes on to state:

“An effort would be made to re-open and transform the business via the introduction of high quality ale, wine and cuisine. I do not see any reason that this site could not be very successful following investment and the selection of highly competent, enthusiastic and skilled staff.

Our business is London based, and we do understand that a country pub may require more marketing, community engagement and promotion, combined with a more nuanced approach to service than our city sites. With almost 40 years of business, and a plethora of material and experiential resources within our family business, we are confident of success.”

31. Ms Moss confirmed this in her oral evidence. The refurbishment required at the Half Moon Inn might be beyond what Mr Tarling would contemplate, but was well within the company’s means. They also have established relationships with contractors and suppliers to both undertake the necessary work and run a successful business afterwards. She cited their most recent venture, the Boleyn Tavern in Newham, which required the refurbishment of a “four storey Victorian gin palace” at a cost running into seven figures. Their ethos was centred on restoration and protection of historic pubs, preserving their place in the community. Ms Moss went on to describe, with what I considered to be real passion, how Horsington would benefit from restoration of its village pub. I need not give the detail, as it largely amounts to the same community value as already described, but it did demonstrate her commitment as a local resident to use her company’s resources and expertise to restore the pub as a community asset if practicable.

32. In cross-examination, Mr Tarling suggested to Ms Moss that restoring a pub in Newham (population 350,000) might more easily justify a seven-figure bill than a pub in Horsington (population between 300 and 500). Remarkable Pubs is still a business, after all. This is a powerful point and Ms Moss acknowledged it as such. She candidly accepted that no work had been done to establish the exact costs of bringing the Half Moon Inn up to standard, together with the other investment required, and that her business’s involvement would need to be economically viable. She was nonetheless adamant that it was a realistic possibility, and spoke of various ideas for marketing, products, and how the pub could be more successful than in recent years.

33. I found Ms Moss’s evidence to be honest, realistic and thoughtful. Mr Tarling is understandably sceptical that she could make the numbers work when he cannot. Yet without doubt, failing pubs are regularly acquired by companies such as hers and turned into successes. Mr Tarling’s days as a publican may now be over, but in

the early 1990s his energy, innovation and hard work revived the fortunes of the Half Moon Inn. Passing the baton on to a new generation may well do likewise. The length of time the pub has existed is important in this respect. Mr Tarling may cite the pandemic, the cost of living, international strife and other such events, but in the past the Half Moon Inn has bounced back from the Napoleonic and two World Wars, rural depopulation from the industrial revolution, recessions, and much else besides.

34. Ms Moss fully recognised the different demands of a rural location. Even given the degree of speculation required by no formal work having been done on the figures, I am in no position to contradict her genuine belief, born out of industry experience and expertise, that in the right hands – whether hers or someone else’s – the Half Moon Inn is a viable proposition as a pub. I make a finding of fact to that effect.
35. In many cases viability is not the end of the story, because section 88(2)(b) does not require a commercially viable business. In this appeal it does lead me find that the future use condition is satisfied. If the Half Moon Inn is a commercially viable pub in the hands of a private business, it will provide value to the community, to a greater or lesser extent, in the same way it is agreed that it did before. It is realistic to think that this will happen. Listing as an ACV does not require a community body to be interested in acquiring the pub itself.
36. Causing me more hesitation is whether it is realistic to think that this will happen in the next five years. I was not referred to any authority on when the five year period begins to run. Considering the statutory scheme, I take it as running from the date when the property was listed as an ACV. Regulation 11 gives a right of appeal against the review decision. Section 92 of the Act specifies that review as being of “the authority’s decision to include the land in the list”, and at section 92(4) describes the procedure that should be followed if the decision on a review “is that the land concerned should not have been included in the authority’s list of assets of assets of community value”, including that that “the nomination becomes unsuccessful”. This phrasing can be seen to retrospectively confirm or nullify the decision to list as of the time it was taken, and it is that review which is appealed. Furthermore, under section 87(3) entry on the list “is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry”. For the making of an appeal to extend that period would be inconsistent with the statutory language, and it is unlikely that Parliament intended the two five year periods to end at different times.
37. To satisfy section 88(2)(b) it must therefore be realistic to think that the pub could be used to further the social wellbeing or social interests of the local community by no later than 21 February 2028. This gives less than four years from the date of hearing. I have already rejected that over five years spent replacing the roof would be required before the pub can re-open. No party has provided any reliable evidence of how long refurbishment should take. Doing my best, given that the pub was lawfully open in 2020 and there is no evidence of any catastrophe in the meantime, I see no reason why it could not reopen in some capacity in the next two or three years.

38. The answer to the second question is also yes. In reaching these views I have not found it necessary to place any particular weight on Somerset's views that could be diminished by Mr Tarling's criticisms of their conduct. The Half Moon Inn meets the criteria at section 88(2) and the appeal is dismissed.

Signed

*Judge Neville*

Date:

29 May 2024