



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

Appeal Reference: CR/2017/0011

**Heard at Fleetbank House, London
On 10 November 2017**

Before

JUDGE JACQUELINE FINDLAY

Between

4C HOTELS (2) LIMITED

Appellant

and

CITY OF LONDON

First Respondent

and

CAMRA LIMITED

Second Respondent

Appearances:

For the Appellant, Mr Banner, Counsel, instructed by Fladgate LLP

For the First Respondent, Ms Daly, Counsel, instructed by City of London

Second Respondent, Mr Strawbridge and Mr Ewbank

DECISION AND REASONS

Introduction

The Localism Act 2011 (“the 2011 Act”) 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.

The Legislation

Section 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 legislation.

Section 88(1) and (2) 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 the 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.

Section 89 explains the procedure for listing:-

“89. Procedure for including land in list

- (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 the Chapter 2 “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 –
 - (3) By a person that is a voluntary or community body with a local connection.
 -
 - (4) The appropriate authority may by regulations make provision as to –
 - (a) The meaning in subsection (2)(b)(iii) of “voluntary or community body;”
 - (b) The conditions that have to be met for a person to have a local connection for the purposes of subsection (2)(b)(iii);
 - (c) The contents of community nomination;
 -”

The regulations in question are the Assets of Community Value (England) Regulations 2012 (SI2012/2421). Regulation 5 provides as follows:-

“Voluntary or community bodies

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”.

The appeal

1. The appeal concerns the Still and Star Public House, 1 Little Somerset Street, London, E1 8AH (“the Still and Star”). The City of London (“the City”), the First Respondent, is the Local Authority for the area where the Still and Star is situated. 4C Hotels (2) Ltd (“4C”), the Appellant, is the Freehold owner of the Still and Star.
2. The City received a nomination from CAMRA, the Second Respondent, on 5 September 2016 requesting the inclusion of the Still and Star in the City’s list of Assets of Community Value (“ACV”).
3. The Still and Star was listed as an ACV by a decision of the City’s Policy and Resources Committee (“the Committee”) on 15 December 2016. The Committee Report set out the legislative process and Appendix 1 of Item 9 outlines the City’s now adopted Guidelines for Determining Nominations. The Committee had before them the Committee Report which considered the Still and Star against the listing criteria.
4. Fladgate LLP, solicitors acting for 4C, lodged a request for a review in a letter dated 3 February 2017 (TAB 25 page 301). On 31 May 2017 a review hearing was held by the Chamberlain of the City of London Dr Peter Kane (“the reviewing officer”). A Review Decision issued on 6 June 2017 found that the statutory tests had been met and the Still and Star would continue to be included in the City’s list of ACVs.

The Issues

5. It is agreed between the parties that the only issue is whether the Still and Star satisfies the requirements of section 88(2) of the 2011 Act, namely does it satisfy the two conditions relating to the qualifying use and the anticipated future qualifying use.
6. In considering these questions I am tasked with deciding Issue 1- the correct interpretation of the word "*furthered*" and Issue 2 - the correct interpretation of the term "*local community*."

The Appellant's submissions

7. The Appellant submits that the appeal should be allowed. In relation to Issue 1 the Appellant submits the following points:
 - a) The use of the word "*further*" in the phrase "*an actual current use of the building... furthers the social wellbeing or social interests of the local community*" and the use of "*furthered*" in the phrase "*there is a time in the recent past when an actual use of the building ... furthered the social wellbeing or interests of the local community*" indicates that the use of the building must make a contribution to social wellbeing or social interests over and beyond what is already available elsewhere. The prospective cessation of the use must make a difference to the 'offer' available to the local community.
 - b) The activities available at the Still and Star are available elsewhere, in particular, there are nearby public house offering food and drink, live music, television, community nights, darts, opportunities for meetings and events and darts facilities.
 - c) If the activities undertaken at the Still and Star ceased there would not be any quantitative or qualitative shortfall of provision to the local community. The use of the Still and Star for activities does not make a contribution over and beyond that which would otherwise be available and therefore it cannot be said that it "*furthered*" the social wellbeing or social interests of the local community.
 - d) The decision was based on irrelevant considerations namely the physical appearance and purported historic interest of the Still and Star. There should not be a back-door heritage designation. The decision was not made on an evidential basis as other venues were not inspected as comparators.
 - e) The Second Respondent's Grounds of Opposition support, to a limited degree, the proposition that the prospective cessation of the use must make a different to the 'offer' available to the local community.
8. In relation to Issue 2, the Appellant submits the following points:
 - a) The proper interpretation of the term "*local community*" should be on the basis of the ordinary meaning of the language used and the context within which it is used as is not defined in the 2011 Act. The Shorter Oxford English Dictionary defines "community"

as “a body of people living in the same locality”. The context within which the term “community” is used is that it is intended to add a qualification to the general words “furthered... social wellbeing or social interests”. The purpose of the term is to indicate that furthering the social wellbeing or social interests of the general public is not sufficient in itself.

- b) There is no evidence that the activities at the Still and Star were undertaken to any significant degree by people living in the locality and the fact that it was closed at weekends indicates that the focus is not on local residents.
- c) Even if the use of the Still and Star had not “furthered... social wellbeing or social interests” it did not do so for the “local community”. The nomination by the Second Respondent referred to its use by workers and tourists who do not fall within the ordinary meaning of the term “local community” and if use by visitors, for work or recreation, were to be sufficient this would be inconsistent with the inclusion of the term which is used to qualify the words “furthered...social wellbeing or social interests” so that benefit to the general public is not sufficient.
- d) The Chamberlain in the Review Decision misinterpreted the term “local community” when stating that “I am of the view that regular visitors, whether residents or workers, can be considered to be the “local community””.

The First Respondent’s Submissions

- 9. The First Respondent submits that the appeal should be dismissed. In relation to Issue 1, the First Respondent submits the following points:
 - a) That the plain and literal meaning of the work ‘further’ or ‘furthered’ does not import a comparative test. The word “further” is defined in the Oxford English Dictionary as “to help forward, assist, to promote favour...” and also as “to go on, continue, to advance, make progress”. It is wrong to attempt to import words into the legislation and the use of the word “furthered” in the 2011 Act does not require a potential asset to be unique or special and the word “further” means only to continue the conduct or activity in issue.
 - b) To impose a requirement that the nominated asset offers something that is not available in another nearby facility or something better that its competitors could lead to no public house in a particular locality being capable of registration. The statutory regime places no limit on the number and type of venues that can be registered in a particular area and if the legislative requirements are met every public house in a particular locality could be registered as an ACV. This approach is consistent with the spirit of the statutory regime, the aims of decentralisation and the transfer of power to communities. The question of whether a nearby public house provides the same or a better function is of no relevance.
 - c) The First Respondent’s position is supported by the decisions in *Pullen v Leeds City Council* (CR/2015/0011) and *Lounge India Restaurant v Central Bedfordshire Council* (CR/2016/0020).

- d) Even if the Appellant's argument is preferred the Still and Star provided an offer that was not replicated by alternative local venues on the basis of the "long association of the Land with the local are [which] contributes to a 'sense of place' for regular users."

10. In relation to Issue 2, the First Respondent submits the following points:

- a) Although in many cases the "*local community*" does equate to a particular section of the general public whose shared characteristic takes the form of a residential and geographical link this does not mean that a residential link between users of the facility and the facility itself is required for each proposed ACV.
- b) The First Respondent's position is supported by the decision in *Pullen v Leeds City Council* (CR/2015/0011).
- c) The "*local community*" is made up of workers, residents and regular visitors. The City has a small full-time residential population and it would be inappropriate and impractical to require a residential link between regular users of a community asset and the asset itself and inappropriate to regard the 'local community' as being limited to the residential community.
- d) The users of the Still and Star are local residents and local workers and the decision was made on that basis.

The Second Respondent's Submissions

11. The Second Respondent submits that the appeal should be dismissed and the listing should stand. The Second Respondent submits the following points:

- a) It is agreed that the activities taking place at the Still and Star can take place elsewhere but this is not relevant. It is sufficient for the nominated land to fulfil a role which furthers the social wellbeing and social interests of the community and that it is realistic to think that such a use can continue in the next five years.
- b) It does not matter how many public houses exist within the close locality. The nomination was made because the Still and Star is the space that the Second Respondent and other users regard as worthy of nomination. The statutory test is simple and the threshold was set deliberately low.
- c) The Second Respondent has over 1600 members who live either in the City or in a neighbouring authority. For the purposes of the Regulations these people are recognised as local. The nature of the City is that it is predominantly commercial and does not have the population of neighbouring Boroughs but we would submit that office workers who regularly meet in the same pub with the same colleagues for a lunchtime snack or after dinner drink are part of a local community.
- d) It is realistic to think that a building which has been a pub for some 160 years could continue to be used as a pub.

- e) There is a high demand for good quality London pub sites and the fact that the Still and Star is not fulfilling its true potential has no bearing on its future viability under an expert operator.
- f) A large number of pubs across London have been saved by forward thinking and proactive local authorities refusing to allow their demolition and instead resisting their loss as per their strategic planning objectives. Under the right management, with quality food, beer and wine, those pubs that understand the needs and aspirations of the community have proved to be very successful and are contributing substantially to the economic and cultural health of London.
- g) The nomination of pubs by local groups is endorsed by Ministers and is one of the key ways in which the plight of pubs can be highlighted to authorities and their profile and significance to their communities raised and recognised.
- h) Given that no consent exists for demolition or alternative use, and no permitted development options exist for change of use, it is entirely realistic to think that an established historic pub with a proud history could continue to serve the needs of the local community in the next five years.

Findings of Fact and Reasons

12. The Still and Star was run as a public house continuously from 1820 until 2 October 2017. On that date the tenant since 2013, Michael Frederick Cox, vacated the premises leaving outstanding arrears of rent, building insurance fees and unpaid electricity bills. Mr Cox gave the lack of revenue, particularly outside the summer months, as the reason for the outstanding rent. From 2 October 2017 the Still and Star has been vacant and not operating as a pub business.
13. Up until 2 October 2017 the Still and Star was used as a public house. It is a small, one bar pub and comprises is a detached freestanding building in an alleyway off Aldgate High Street. Pub historians refer to the Still and Star as a 'slum pub' because it was a house or shop that was converted to a pub around the time of the licensing deregulation. It is believed that the name originates from the premises once containing a still for producing spirit, likely gin, in the hayloft, and the strong associations with the Jewish community around Aldgate and Spitalfields, the star referring to the Star of David. The accommodation comprises accommodation for the landlord on the first and second floors, an open plan servery around a single long bar on the ground floor with games area and toilets to the rear, a basement drinks cellar, an outdoor pavement area with tables and chairs and a front outdoor recreational space with picnic-style tables. Until 2 October 2017 the Still and Star was open Monday to Friday only between 11.00am and 11.00pm and food was served between 11.00am and 3.00pm. Inside the pub there were two television screens showing sporting events and a darts board. The pub hosted darts matches and summer barbecues.
14. "*Social wellbeing*" and "*local community*" are undefined in the 2011 Act. It is clear from the above findings that in the recent past the Still and Star was used for social and recreational purposes and that the use was not an ancillary use.

15. In relation to Issue 1, I reject the submission that the use of the word "*furthered*" in the phrase "*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*" indicates that the use of the building must make a contribution to social wellbeing or social interests over and beyond what is already available elsewhere and that the prospective cessation of the use must make a difference to the 'offer' available to the local community. Had Parliament intended to introduce such a requirement or test it would have said so and have replaced "furthered" with word indicating this such as "enhanced" or "advanced".
16. As has been acknowledged by all the parties it is inappropriate to introduce words into the statute. The word "*furthered*" should be given its ordinary meaning. I rely on the Oxford English Dictionary definition of the word "*furthered*" meaning to have helped forward, to have assisted, to have promoted or favoured. I do not find that the use of the word is in any way ambiguous or vague, has a doubtful meaning or has acquired a peculiar meaning. The meaning of the word "*furthered*" in this context is plain and straightforward. The statute means what it says. It is enough that the use of the Still and Star was for social wellbeing. It is not necessary to show that the use was in some way better, different, bigger, unusual, rare or unique or that the use needed to be measured or tested against a similar use in some other establishment.
17. In reaching my decision I have borne in mind that there is a broad discretion and a low statutory bar for assets to qualify as ACVs and this was the intention of the Government as set out in the localism agenda. The introduction of a comparative test as submitted by the Appellant would make the listing of an asset hugely complicated and wholly unworkable. The consequences of interpreting "*furthered*" as proposed by the Appellant would introduce a requirement of such complexity as to make the process for the listing of an asset wholly incompatible with Government's intentions and inconsistent with the spirit of the statutory regime.
18. I have borne in mind, also, that the logical conclusion of imposing a requirement that the nominated asset offers something that is not available in another nearby facility or something better than its competitors would mean that no public house in a particular locality would be capable of registration. The statutory regime places no limit on the number and type of venues that can be registered in a particular area and if the legislative requirements are met, every public house in a particular locality can be registered as an ACV.
19. In relation to Issue 2, I reject the submission of the Appellant. I find that although in many cases the "*local community*" does equate to a particular section of the general public whose shared characteristic takes the form of a residential and geographical link this does not mean that a residential link between users of a facility and the facility itself is required for each proposed ACV.
20. In this case the "*local community*" is made up of workers, residents and regular visitors. The City has a small full-time residential population and it would be inappropriate and impractical to require a residential link between regular users of a community asset and the asset itself and inappropriate to regard the "*local community*" as being limited to the residential community.

21. The term “*local community*” should be interpreted in accordance with the Oxford English Dictionary as a “body of people viewed collectively”. Had Parliament intended “*local community*” to have the restricted meaning of a body of people living in the same locality it would have said so. The term “*local community*” can mean a group of people living in the same locality but such a restricted interpretation is not appropriate in these circumstances.
22. The Appellant’s proposition would impose a restriction that would not be compatible with the spirit of the regime. Accordingly, it is irrelevant that the Still and Star was closed at weekends.
23. I reject the submission that the context within which the term “*community*” is used is that it is intended to add a qualification to the general words “*furthered... social wellbeing or social interests*” because if that had been the intention statute would have stated this.
24. In relation to section 88(2)(b) I find it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Still and Star that would further the social wellbeing or social interests of the local community. I am persuaded by the submission of the Second Respondent that under the right management, with quality food, beer and wine the Still and Star could operate as a public house. I have borne in mind that the Still and Star has operated as a public house since 1820 until recently and taking into account its location it is realistic to think that it can continue to do so. It has a loyal and enthusiastic clientele and there is no reason why they would not wish to continue to use the facilities of a public house. In reaching this decision I have borne in mind that it is not necessary for there to be a business plan and it is sufficient to think that there could be a use that would further the social wellbeing or social interests. In my view it is a realistic outcome to think that the Still and Star will reopen as a pub in the next five years.

Decision

25. I find that there is a time in the recent past when an actual use of the Still and Star which was not an ancillary use furthered the social wellbeing or interests of the local community.
26. I find that 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. The Still and Star meets the requirements of section 88(2)(a) and (b) of the 2011 Act.
27. This appeal is dismissed.

Signed: J R Findlay

Judge of the First-tier Tribunal
Date: 5 January 2018