

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-015

Case Officer: Darren McBride

Site Address: Pluckley Post Office and Stores, The Street, Pluckley,
Ashford, Kent TN27 0QS

Title Number(s): K790497 (Freehold)¹

Nominating Body: Pluckley Parish Council

Nomination Validated: 19 September 2016

Deadline Date: 14 November 2016

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Introduction

Under the Localism Act 2011 ("the Act"), the Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value'.

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Council:

- 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
- 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 community².

¹ Note: The nominated building/land comprises the two parcels of land outlined in red on the plan attached to this Report. The irregularly shaped area of land blocked coloured in black is not included in the nomination.

² Subsection 88(1) of the Act

Buildings or land may also be of community value if in the opinion of the Council:

- 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 social³ interests of the local community, and
- 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 community⁴.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination must be determined within eight weeks. In this instance, the nomination was validated by the Council on 19 September 2016 and so must be determined by 14 November 2016.

If the Council accepts a valid nomination then it must be included on the 'List of Assets of Community Value'. If the Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination'.

Procedure

Information about this community nomination has been sent to the following:

- Pluckley Parish Council (the nominating body)
- Freehold Owner(s)
- Mortgagee
- Cllr G Clarkson (Leader of the Council)

³ Note: the wording of this condition is different to all the other conditions in that it refers to furthering "the social wellbeing or interest of the local community" rather than "the social wellbeing and *social* interests of the local community". However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another* (2015), Judge Warren held that the word "social" should be read in here (*para. 27*)

⁴ Subsection 88(2) of the Act

- Cllr G Bradford and Cllr G Dyer (Portfolio Holder and Lead Member for Highways, Wellbeing and Safety)
- Cllr A Pickering and Cllr C Bell (Ward Councillors)

If the Corporate Director (Law and Governance) and Monitoring Officer includes the asset on the Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal process.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Council in writing.

Interim Moratorium

There is then a six week interim period from the point the owner notifies the Council. The Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six week period.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Council of the intention to dispose of the asset).

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most

claims will arise from a moratorium period being applied; however, the wording of the legislation does allow for claims for loss or expense arising simply as a result of the asset being listed.

The Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is "a voluntary or community body" with "a local connection", as defined in Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012 ("the Regs").

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Council⁵.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value. The questions and answers state as follows:

Q1. What is the current main use of the land/building(s)?

A1. "General stores and sub-post office"

Q2. How does that current main use of the land/building(s) further the social wellbeing or social interests of the local community...?

A2. "This is the only general stores in the parish. The sub-post office serves [many⁶] residents without transport. Residents have stressed the importance of this asset for the community"

Q3. Why do you consider that this, or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...?

A3. "No reason to think it will not"

Generally, village shops are the type of buildings which the Community Right to Bid Scheme is designed to protect. However, the Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is of community value.

⁵ Note: The nomination as originally submitted included an imprecise plan, but a new plan was subsequently submitted which allowed the nomination to be validated

⁶ The nomination form states that: "...the sub-post office serves man residents without transport..." Assuming that "man" is a typo then I believe that it should be "many".

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

“...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset’s being maintained for community use”

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a significant percentage of their local community.

The building is currently open and operating as a village shop and sub-post office. No evidence has been submitted which demonstrates that the business is viable and therefore likely to continue to remain open. However, there is no requirement for the nominating body to demonstrate future viability. The test is simply that it is “realistic to think that there can continue to be non-ancillary use of the building...” The fact that the building is currently open and operating as a village shop and sub-post office would, in my view, suggest that it is realistic to think that its current use can continue.

For a building or land in current use to be included on the ‘List of Assets of Community Value’ its actual current use – not “an ancillary use” – must further the social wellbeing or social interests of the local community.

In this case, the nominating body claims that the nominated property is the only general stores and sub-post office in the parish and that it serves many of those local residents without transport.

A village shop’s primary use is to provide goods for purchase by the local community and a sub-post office provides additional, often essential, services. In my view, such goods and services would be important in furthering the social wellbeing or social interests of the local community.

Also, the nominated property is the only general stores in Pluckley. In my view, this would increase its importance to the local community.

The nominating body has confirmed that the building/land nominated comprises all buildings/land registered under Title Number K790497. The title plan includes separate annex building(s)/land to the rear of the main building and so, in an e-mail dated 16 September 2016, I asked the nominating body to:

“...please confirm the use of the annex building(s)/land? For example, is it the residence of the proprietor of the Post Office and Stores or is it building(s)/land whose use is independent from the Post Office and Stores?”

In an e-mail dated 19 September 2016, the nominating body clarified that:

"...the outbuildings/land to the rear of the stores are to be included as they are used for the storage of merchandise to be sold in the shop. There is residential accommodation above the shop used by shop staff"

Clearly the use of the annex buildings "for the storage of merchandise sold in the shop" is a use intrinsic to the main use of the general stores/sub-post office. As such, it is appropriate that the annex buildings be included in this nomination.

Likewise, having regard to the general exclusion of residential properties from listing, it is clear that the residential quarters above the general stores/sub-post office are integral to the main use of the building/land. Therefore, in this instance, the exception to the general exclusion from listing (as explained in the second paragraph on page 1 of this report) would apply in this case.

Conclusions

In my view, it is reasonable to conclude that the actual current use of the building/land as a general stores and sub-post office does further the social wellbeing and social interests of the local community.

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-heading *Consequences of Listing*) but the internal listing review process and appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value'.

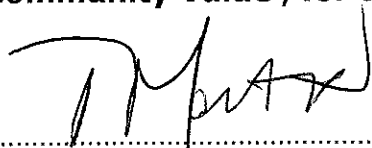
Recommendation

That the Corporate Director (Law and Governance) and Monitoring Officer accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value'.

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AUTHORITY

In accordance with the functions delegated to me, I hereby accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value', for the reasons set out above.



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Corporate Director (Law and Governance) and Monitoring Officer

Date: 8/11/2016

H.M. LAND REGISTRY		TITLE NUMBER	
		K 790497	
ORDNANCE SURVEY PLAN REFERENCE	TQ 9245	SECTION C	Scale 1/625 Enlarged from 1/2500
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