FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid

Tribunal Reference: CR/2015/0010

Appellant: STO Capital Ltd

Respondent: London Borough of Haringey

Judge: Peter Lane

DECISION NOTICE

Introduction

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as "the moratorium" will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

2. Section 88 of the 2011 Act provides as follows:-

> "88 Land of community value
> (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—
> (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
> (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further

(whether or not in the same way) the social wellbeing or social interests of the local community.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority-

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community."

The appeal

3. This appeal concerns a building known as the Alexandra Public House, 98 Fortis Green, London, N2. The Alexandra was listed by the respondent on 18 February 2015 as an asset of community value under the 2011 Act, on the application of the Save the Alexandra Action Committee (SAAC). The appellant's attempt to have this decision reversed on review was unsuccessful in June 2015, following which the appellant appealed to the Tribunal.

4. The SAAC was asked by the Tribunal on 24 August 2015 whether it wished to be a party to the appeal. No response was received.

5. The appellant and the respondent are content for the appeal to be decided without a hearing. In all the circumstances, I am satisfied that I can justly do so. I have considered the material submitted, consolidated in a bundle, indexed on its face, running to 60 pages.

6. The Alexandra was originally two separate dwellings, constructed in the mid-19th century. It later became a pub, with its own brewing business, before being taken over by Ind Coope in 1902. Ind Coope remained the owners until the 1990s. Alterations to the building occurred in the 1920s and, the early 1980s.

7. Prior to its acquisition by the appellant, the Alexandra was owned by Punch Taverns, subject to a lease to a tenant who ran it as essentially a "wet-led" pub, the premises being unsuitable for a business based around the serving of food. Following the tenant's decision to leave, citing poor trade, the Alexandra was put on the market (July 2012) with a guide price of £950,000. It is said that there was no serious interest in the premises from anyone contemplating running it as a pub. By the time of its acquisition by the appellant, the Alexandra had been vandalised and was in a semi-derelict state.

8. According to the appellant, the tenant was regarded as "above average" in his skills as a publican, which was the only reason why the Alexandra survived as a pub as long as it did. Even so, "an £11,000 profit for a job that regularly requires 70-80 hour weeks only serves to illustrate the lack of sustainability of a pub operation in this location".

9. In its review decision, the respondent said:-

> "The Assessment Panel were aware that the owner had applied for a change of use for the Alexandra Public House for housing. This application had been refused by the local authority but the panel understood that the owner had appealed the decision. The panel considered carefully the possible outcomes. If a planning inspector were to approve the change of use, then this would make it unrealistic for the Alexandra Public House to meet the relevant criteria and it would not be realistic to think that there could continue to be non-ancillary use of the building which will further (whether or not in the same way) the social well being or social interests of the local community".

10. Since the review decision was taken, the appellant's appeal against the refusal of planning permission for the conversion of the Alexandra into two three-bedroom family dwellings has been allowed by an Inspector appointed by the Secretary of State. In his decision dated 20 July 2015, the Inspector noted the listing of the premises of an asset of community value "does provide a tangible demonstration that a section of the community considers that, through recreation, the pub furthered the social well being or social interests of the local community". Nevertheless the Inspector noted that "the Council's finding regarding re-use of [the] building is contingent upon the current appeal being dismissed … the primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development".

11. In its response to the appeal, the respondent says that it will be "a matter for the Tribunal" to decide whether the inspector's decision to grant permission "means that it is no longer realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building for community use". The response, however, said that the review decision was made on the basis that the respondent was unconvinced that the marketed guide price reflected the value of a property as a public house; that the respondent was not satisfied a satisfactory marketing exercise had been undertaken; that in the absence of turnover or profit figures, it was not accepted there had been a real decline in trading before closure; that there was an insufficient breakdown of the redecorating costs to draw any relevant conclusions; and that the respondent disagreed with the claim that a "wet-led" public house in the location of the Alexandra was unviable.

Discussion

12. In CR/2013/0003 (Spirit Pub Co Ltd v Rushmore Borough Council and the Friends of Tumbledown Dick) the Tribunal found that the grant of permission for change of use of the Tumbledown Dick of public house to a restaurant/takeaway was not something that could or should be ignored, in the context of an appeal against the 2011 Act. The Tribunal in that case went on to find that the making of an agreement to buy the freehold of the Tumbledown Dick by a large organisation (McDonalds Restaurants) and the obtaining of planning permission for a change of use, meant that "other possibilities become much less likely".

13. Both the grant and the refusal of planning permission for the change of use of a listed asset are capable of having a material effect upon a decision as to whether the test in section 88(2)(b) of the 2011 Act is met, looking at matters as at the date of deciding the appeal. In a number of cases, the Tribunal has found that the refusal of planning permission may have a bearing in, for example, making it realistic to think that the owner of the property may put it on the market in the next five years for a price that reflects its current permitted use (rather than any possible change of use); or else decide to run it as a pub, serving the community. Conversely, where, as here, planning permission for a change of use has been granted, and where there is nothing to suggest that the appellant would be at all inclined to market the Alexandra as a pub, the planning permission may, depending on all the circumstances, render "much less likely" other possibilities within the next five years, involving social uses of the kind contemplated in section 88(2)(b).

14. Even if the appellant were to put the Alexandra on the market, the grant of planning permission for the change of use is, I find, very likely to mean that the asking price would be well above the figure that anyone looking to run it as a pub would be prepared to pay. In so finding, I have had regard to the points made by the respondent, to the effect that the picture painted by the appellant of the recent financial position of the pub business at the Alexandra may have been somewhat bleaker than the evidence showed. But even on a "best case" scenario, a person of similar aptitude and stamina as the former landlord, even if he or she were to come forward, would be highly unlikely to make a bid for the Alexandra that could compare favourably with someone looking to purchase it in order to effect the permitted change of use into dwellings.

15. I see no evidence of any attempt on the part of the nominator or anyone else to raise funds (or even begin to formulate proposals) in order to make an offer for the Alexandra. Although, as the Tribunal has explained, there is no requirement for a fully-fledged business case to be submitted by the nominator or anyone else, there is, in the present case, simply no evidence to suggest that a community group might make a realistic bid for the Alexandra.

Decision

16. This appeal is allowed.

Judge Peter Lane
Chamber President
Date: 4 April 2016