



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Appeal Reference: CR/2015/0023

Heard at Leeds Employment Tribunal
On 24 May 2016

Before

JUDGE PETER LANE

Between

JASWANT SINGH

Appellant

and

LEEDS CITY COUNCIL

Respondent

Representation

For the Appellant: Mr Jaswant Singh and Mr Vijay Singh
For the Respondent: Mr Freddie Humphreys, Counsel, instructed by The
Solicitor, Leeds City Council

DECISION AND REASONS

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.

Legislation

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.
- (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 the legislation.”
 - (7) Section 108 includes the following definitions:-

““building” includes part of a building;

...

“land” includes—

 - (a) part of a building,

....”

The land and building

3. This appeal concerns land and a building at 31 Potternewton Lane, Leeds LS7. The extent of the land and building, as listed by Leeds City Council (“the Council”) pursuant to the 2011 Act, is partly shown by a map produced in connection with the nomination. The boundaries of the land and building at ground level are shown edged red on that plan. It is, however, common ground that the properties known

as Nos. 45 and 47 Potternewton Lane are not within the listing, even though the listed property of No. 31 is, in places, situated beneath Nos. 45 and 47. The definitions provisions in section 108 of the 2011 Act are such as to permit this outcome.

4. No. 31 Potternewton Lane was formerly the “Shoulder of Mutton” public house. The unbuilt on land within the red boundary was its garden and car park. Following the closure of the Shoulder of Mutton as a pub, the building at No. 31 was leased to Leeds Mind, an independent charity that works with and supports individuals with mental health problems. Leeds Mind acts in conjunction with Inkwell Arts, which provide a range of classes and activities at No. 31. Some of these are on a “referral only basis”, whilst others are open to all. The classes include painting, life-drawing, ceramics, creative writing, salsa, yoga and gardening. There was a weekend arts café and monthly events including acoustic evenings, jazz afternoons, cinema, poetry evenings and arts exhibitions. The garden was used, amongst other things, for a May Day festival for the community, as well as for bonfire night and midsummer celebrations.

5. Although the lease of the former Shoulder of Mutton to Leeds Mind/Inkwell extends only to the ground floor and basement, they have been permitted by the appellant to use the first floor of the building. Four of the car parking spaces in the car park are allocated to Leeds Mind. The appellant acquired the building and land with the aim of eventually seeking to develop the garden area for residential accommodation. Accordingly, Leeds Mind was granted only a licence of that part of the property (in 2011).

The appeal

6. On 29 May 2015, the Council received a community nomination from a body known as the Potters and Newts Neighbours. After consideration, the property was added to the list maintained by the Council pursuant to section 87 of the 2011 Act. On 4 September 2015, the appellant requested a review of that decision. A hearing of the review took place on 14 October 2015. On 28 October 2015, the appellant was informed that the Council had determined that the property would remain listed.

7. The appellant appealed against that decision to the First-tier Tribunal. The hearing took place in Leeds on 24 May 2016. Mr Jaswant Singh, the appellant, appeared in person, assisted by his nephew, Mr Vijay Singh. Both made submissions. The respondent was represented by Mr Humphreys, Counsel, who also made submissions.

8. The appellant told me that he is in negotiations with Leeds Mind with regard to the grant to them of a new lease in respect of the building at No. 31, but not the garden. The appellant had made it clear to Leeds Mind, in the past, that they were

allowed to use the garden but that this would not be for any great length of time, owing to the appellant's plans to see that area developed.

9. On 10 February 2016, the appellant was granted planning permission for residential development of the garden. The appellant said that he had allowed Leeds Mind/Inkwell to use the garden "out of the kindness of my heart" in the interim but he had been very upset at the hostility shown in certain quarters towards his redevelopment proposals. Acts of trespass had been carried out on the garden and the appellant had been subjected to racial abuse. He was no longer inclined to allow the garden to be used, as it had been before. These points were reiterated by Mr Vijay Singh.

10. Mr Humphreys submitted that, certainly at the time of the nomination, the entirety of the property in question met the criteria in section 88(1) for listing as an asset of community value. Although the garden was not at present in community use, and despite the fact that planning permission for residential development had been obtained, it was still reasonable to think that, until that development actually began, the appellant may permit use of the garden, which met the requirements of section 88(2)(b).

Discussion

11. There is, I find, no question but that the part of the property comprising the building at No. 31 meets the requirements of section 88. The undisputed evidence shows that it is furthering relevant social wellbeing and interests. The fact that the appellant is in discussions with Leeds Mind regarding a new lease makes it abundantly plain that it is realistic to think that such a state of affairs can continue.

12. The real issue in this case is whether, viewed at the present time, the garden satisfies section 88(2)(b). The fact that it satisfies section 88(2)(a) is, again, manifest, having regard to the evidence of its recent use.

13. The racial abuse and other hostile acts which the appellant describes are, on any view, deplorable. The appellant's willingness to let relevant social use of the garden take place, whilst he was furthering his development scheme, testifies to the strength of the appellant's public spirit. In the circumstances, it is entirely understandable that the appellant feels extremely hurt by the actions of certain people. I accept his evidence that, at the present time, he is extremely disinclined to contemplate any resumed social use of the garden.

14. I must, however, step back and consider, in the round, whether it is, nevertheless, "realistic to think that there is a time in the next five years when there could be" relevant use of the garden. I accept the submission of Mr Humphreys that, whilst relevant, the stated intention of the owner of listed property cannot be

determinative of the section 88(2)(b) issue; since otherwise listing would, in reality, become a voluntary process, so far as the owner is concerned.

15. The fact that the appellant has obtained planning permission for residential development of the garden is, of course, of material significance. If the evidence had shown that there was some indication of a timescale for the redevelopment, I consider that it would not be realistic to think that there would be a time, as required by section 88(2)(b), when relevant social use might realistically resume. It was, however, striking that the evidence from the appellant did not suggest that he has any particular timescale in mind for the redevelopment.

16. On the entirety of the evidence, I have come to the conclusion that, as a matter of fact, it is realistic to think that the garden may, within the next five years, be used for relevant social purposes. Whilst I fully understand and sympathise with the appellant's current stance viz a viz the garden, and accept that - were the matters to be decided on a balance of probabilities - it is more likely than not that he will keep the garden free from any use, until redevelopment takes place, it is still realistic to think in terms of an alternative scenario. As I have said, the appellant has shown himself to be someone of commendable public spirit. On the basis that Leeds Mind may well (as I have said) continue their use of the building at No. 31, one can realistically envisage the appellant once again letting them/Inkwell use the garden for similar purposes as in the past. Any such use would plainly be on an informal and temporary basis. Such a use of the garden may well be seen by the appellant as having a positive effect on the amenity of the neighbouring buildings (including Nos. 45 and 47). It would also be likely to deter would-be trespassers, if the garden were seen to be serving such a purpose until any development is ready to begin.

17. Given the position as at the date of the hearing regarding Leeds Mind, it is also realistic to think that there could continue to be relevant use of the car park. I agree with the Council that, for the purposes of listing, the building, garden and car park still fall to be looked at as a single unit, for the purposes of section 88.

Decision

18. This appeal is dismissed.

Judge Peter Lane

23 June 2016