



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

**Appeal Reference: CR/2019/0004**

**On 24 January 2020**

**Between**

**PUNCH PARTNERSHIPS (PML) LIMITED**

Appellant

**and**

**BRACKNELL FOREST BOROUGH COUNCIL**

First Respondent

**and**

**VALERIE GOODWIN-HIGSON (FOR ROSE AND CROWN PUB COMMUNITY  
GROUP)**

### **DECISION AND REASONS**

#### **Decision**

1. The appeal is allowed. The nomination is invalid.

#### **The Legislation**

2. The relevant legislation is contained within the Localism Act 2011 (“the Act”) and The Assets of Community Value (England) Regulations 2012 (“the Regulations”).

Section 88 - Land of community value

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(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.

**Section 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 this Chapter “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—

(i) by a parish council in respect of land in England in the parish council's area,

(ii) by a community council in respect of land in Wales in the community council's area, or

(iii) by a person that is a voluntary or community body with a local connection

**The Assets of Community Value (England) Regulations 2012 (“the Regulations”)**

**Definition of local connection**

Regulation 4.—(1) For the purposes of these regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if—

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- (a) the body's activities are wholly or partly concerned—
  - (i) with the local authority's area, or
  - (ii) with a neighbouring authority's area;
- (b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied—
  - (i) for the benefit of the local authority's area, or
  - (ii) for the benefit of a neighbouring authority's area; and
- (c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.

(2) For the purposes of these regulations and section 89(2)(b)(iii) of the Act—

- (a) a parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area; and
- (b) a parish council has a local connection with land that is in a local authority's area but is not in any parish council's area if—
  - (i) the council's area is within the local authority's area, or
  - (ii) any part of the boundary of the council's area is also part of the boundary of the local authority's area.

(3) In paragraph (1)(c), "local member" means a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts.

**Voluntary or community bodies**

Regulation 5.—(1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), "a voluntary or community body" means—

- (a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(1);
- (b) a parish council;
- (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;
- (d) a charity;
- (e) a company limited by guarantee which does not distribute any surplus it makes to its members;
- (f) an industrial and provident society which does not distribute any surplus it makes to its members; or

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(g) a community interest company(2).

(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.

(3) In this regulation “industrial and provident society” means a body registered or deemed to be registered under the Industrial and Provident Societies Act 1965(3) which meets one of the conditions in section 1 of that Act.

**Regulation 6 Contents of community nominations**

6. A community nomination must include the following matters—

(a) a description of the nominated land including its proposed boundaries;

(b) a statement of all the information which the nominator has with regard to—

(i) the names of current occupants of the land, and

(ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;

(c) the nominator’s reasons for thinking that the responsible authority should conclude that the land is of community value; and

(d) evidence that the nominator is eligible to make a community nomination.

**Background**

3. The 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 a local authority to pay compensation to an owner who loses money as a consequence of the asset being listed.
4. Punch Partnerships (PML) Limited, the Appellant, is the owner of the Rose and Crown Public House, 108, High Street, Sandhurst, Berkshire, GU47 8HA (“the Property”).
5. The Property was nominated as an Asset of Community Value (“ACV”) under the Community Right to Bid provisions of the Act by nomination made by the Rose and Crown Supporters which became The Rose and Crown Pub Community Group (“the Group”). The nomination form was dated 23 September 2018.
6. On 19 February 2019 the Respondent listed part of the Property.
7. The Appellant requested a review of the decision on 25 February 2019.
8. On 18 April 2019 the Respondent upheld the decision to list the Property as an ACV.
9. The Appellant lodged an appeal dated 15 May 2019.

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10. The Appellant sought and was granted planning permission for the erection of two detached dwellings with associated access, parking, landscaping and bin/cycle storage following demolition of existing outbuildings to the rear of the Property.

**Findings of Fact and Reasons**

11. A local authority can only consider whether to include land in its area in its list of assets of community value in response to a ‘community nomination’ or where permitted by Regulations.
12. A ‘community nomination’ can be one made by a ‘voluntary or community body’ as defined in regulation 5 of the Regulations with a ‘local connection’ as defined in regulation 4.
13. Regulation 5(1)(c) includes within the definition of a ‘voluntary or community body’ the following:
  - (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.
14. The First Respondent accepted the nomination on the basis that the Second Respondent was a ‘voluntary or community body’ being an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members.
15. In considering whether the nomination was valid, I considered whether it would be just and fair to adjourn the case and invite the Second Respondent to submit a submission on the question of whether the Group is a ‘community body’ as defined. I decided that it is not proportionate to do so. This appeal has been outstanding since May 2019, the parties have had ample opportunity to prepare and present their cases and the validity of the nomination was raised by the Appellant in the Grounds of Appeal thereby putting the First and Second Respondents on notice. The Second Respondent has had ample opportunity to make representations on this point and they have chosen not to do so.
16. I considered that it would not be proportionate to adjourn to obtain further information for the additional reasons set out in paragraph 29 below.
17. In relation to the issue of validity of the nomination, in the Grounds of Appeal (pages 196 to 206), the Appellant submits that the evidence provided fails to show that at the time when the nomination was initially submitted the Group was eligible to make a community nomination.
18. In relation to the issue of validity of the nomination, Mr Bull, Assistant Borough Solicitor and Deputy Monitoring Officer, on behalf of the First Respondent, states (page 214) that at the time he made the decision he believed of the large number of supporters that there were a significant among their number to be considering a community bid and that the application was to preserve a community asset. Since making the decision, however, he had received unsolicited approaches from Mrs Goodwin-Higson and Mrs Fenner which

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led him to believe that the aim of the bid may have been to frustrate the planning application without an intention to make a community bid to purchase the property. Mr Bull stated that he had been told by Mrs Fenner that there were different views and aims within the Group and that she wanted to prevent the planning application and it was never their intention to buy the property. Mr Bull stated that this been clear to him he may have made a different determination.

19. Mr Russell, Chairman of The Rose and Crown Pub Community Group, in his letter dated 9 January 2019 (page 355 to 357) states that the Group was formed because “the Rose & Crown pub desperately needs the protection of an ACV.” He states that of paramount importance to the local residents is to stop the owners from “impairing the pub’s ability to trade” and to keep the pub beer garden as well as the car park. He states: “obliteration of that view and any reduction in the beer garden size will hurt the pub and, in turn, the community – and the current planning application will effectively destroy the beer garden.”
20. Mrs Goodwin-Higson, in her letter of 7 January 2019 states that “the owners of the pub have applied for planning permission for 2 houses in the back garden, with road access through the existing car park. If permission were granted it could pave the way for the demise and closure of the pub.”
21. Mr Russell, Chairman of the Group, Mrs Fenner, Secretary of the Group, and Mrs Goodwin-Higson, the nominated representative of the Group are the three most prominent members of the Group and I have attached weight to their expressed views.
22. The nomination form at pages 12 to 14 states under the section marked “Eligibility to nominate” the following:
  - “Name of organisation: Rose and Crown Supporters
  - Type of organisation: Unconstituted community group of at least 21 members
  - Evidence: Rose & Crown Supporters.doc
  - Description of organisation: Our organisation is made up of members of the local community who visit the Rose and Crown to socialise with their friends, enjoy a meal or drink, or participate in various musical groups.”
23. The Rose and Crown Pub Community Group Constitution (pages 26 to 28) was never adopted.
24. I find that the Group was made up of at least 21 local members who were registered, at an address in the local authority’s area or in a neighbouring authority’s area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts.
25. On the evidence before me I am not persuaded that the Group is an ‘unincorporated body’ within the meaning of regulation 5(1)(c).
26. In my view the members of an unincorporated body are governed by a contract between them which may be expressed or implied and may or may not be set out in writing. Accordingly, it is not fatal , in my view, that the Constitution was not adopted. However,

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I cannot find that there was a sufficient level of understanding and agreement between the relevant individuals as to the basis on which they were associated with each other that they could properly be described as a ‘body’.

27. The Concise Oxford Dictionary defines a ‘body’ as ‘an organised group of people with a common function.’ The organisation and function can be informal but there must be a coming together of individuals for a matter of common interest. It has to be more than a collection of individuals who have not considered properly the basis on which they have joined in the association with each other. I find that there was not one common purpose in that some of the members of the Group, and, in particular, the three more prominent members, hoped to prevent the planning application. It is likely that the preservation of the pub and the putting forward of a community bid was not the real intention of the nomination of at least the most prominent members of the Group. I am not satisfied on the basis of the evidence put before me that there was the necessary mutuality of bond and shared purpose between the members of the Group for it to be properly described as a body.
28. On the evidence before me I am not satisfied that the Group is an unincorporated body which does not distribute any surplus it makes to its members. No information has been provided about what funds would be available to the Group and how those funds would be used or distributed. The Membership Application form included the following question: “At some time in the future, there may be an opportunity for the community to buy the pub. Please indicate if you would be interested in offering financial support.” Over 50% of the members indicated that they would be so willing. It is not clear how any funds collected would be used or distributed.
29. With reference to paragraph 16, even if further evidence were submitted sufficient to satisfy me that the nomination was valid, I would have found that the provisions of section 88(1)(b) of the Act were not satisfied.
30. On the basis of the evidence before me I would have found that it is not realistic to think that there can continue to be non-ancillary use of the building or other land which will further the social wellbeing or social interests of the local community. The case law on what is “realistic” suggests that the threshold needed to satisfy this test is low. It would not be necessary for the Group to produce a commercial or financial analysis. However, in view of the statements by Mrs Fenner to Mr Bull that there were different views and aims within the Group and that it was never her intention or the intention of, at least, some of the other members of the Group to seek to purchase the Property the “realistic to think” test could not be satisfied. Mrs Fenner is the Secretary of the Group and in that position of responsibility it is likely that she speaks with authority and knowledge. I attach weight to her statement to Mr Bull that her intention as Secretary of the Group and the intention of other members of the Group was never to organise or propose a bid for the Property.

J R Findlay

First-tier Tribunal Judge

Signed : 28 January 2020