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My reference: 30097062

Please ask for: Guy Slocombe

11 December 2015

Dear Sirs

Review of decision to list The Swan & Edgar Public House, 43 Linhope Street, London NW1 6LH as an Asset of Community Value

I refer to the written submission dated 30 July 2015, submitted on behalf of Montague One Limited ("the Owner") requesting a review of the decision to list The Swan & Edgar Public House ("the Property") as an Asset of Community Value. The review took place in the form of an oral hearing on Thursday 26 November 2015 at Westminster City Hall.

On 6 May 2015, the Council made a decision to list the Property following a nomination received from Save the Linhope Street Local ("the Applicant").

As part of my review, I have considered the submissions of the Owner at the hearing and the evidence provided by the Owner before the hearing. I have considered the evidence submitted by the Applicant before the oral hearing and submissions at the hearing. I have also considered the evidence provided by the Council in connection with the nomination of the Property and the review of that decision. Towards the end of the hearing, a query arose regarding marketing evidence and it was agreed that the Owner would provide evidence of the marketing of the property. This evidence was eventually provided on Sunday 6 December 2015 and having considered matters further it seemed reasonable after finally receiving the evidence that this should be considered when reaching my decision. The marketing evidence has been taken into consideration in reaching my decision, but in my opinion has no material impact on my decision.

I have set out below in italics the two grounds of review submitted by the Owner, followed by my comments on the grounds:

1. *Whether there is a time in the recent past when an actual use of the building or other land that was not an ancillary use further the social wellbeing or interests of the local community*

In the present case, the issue is whether the Property falls within Section 88(2) of the Localism Act 2011 (the Act). Section 88(2) of the Act states that a building or other land could be land of community value if:

- (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 first ground relates to the first limb of the statutory test in section 88(2) of the Act. The Applicant's evidence is that prior to 2013 (when the Owner purchased the Property and closed the Property), that the actual use of the Property did further the social wellbeing or interest of the local community. The Owner in part 2 of his written submission dated 18 September does not dispute this and at the hearing accepted that in the recent past that there had been community use. In his written representation, the Owner states "There is no current community



use but it is accepted that there was past use prior to mid 2013". I am satisfied that on the evidence provided 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.

In the Owner's written submission at paragraph 1(a), he queried the emphasis placed on the term "actual use" of the Property by the Council when reaching its original decision to list the Property. This is an incorrect reading of the Council's decision letter, The first paragraph of the Council's decision letter makes it clear that as this is a case where the Property is not currently in use that, that it was necessary to consider (i) whether there is a time in the recent past when an **actual** use of the building....." My emphasis is on the use of the word actual but this is in the context of the past use as opposed to any present use.

In the second part of the representation, paras 1(b) and (c), a query is raised about the meaning of community value and social wellbeing. I am satisfied on the basis of the evidence provided by the Applicant that the use of the pub before 2013 furthered the social wellbeing or interests of the local community.

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

The Owner from his written representation has made it clear that he has no intention of reopening the Property as a public house and that notwithstanding the refusal of previous planning applications, that he will continue to pursue planning permission by way of appeal and further applications in the future.

The legislative test in section 88(2)(b) does not state that it is essential to demonstrate that the pub would be reopened but whether "it is realistic to think" that there could be a non-ancillary use of the building that would further the social wellbeing or social interests of the local community. The Judge in the First Tier Tribunal Decision (CR/2013/00005) London Borough of Hackney v Churchwell Residents' Group said the following when explaining the test.

"The question posed by Parliament is whether "it is realistic to think" that there could be such an outcome. This should not be confused with the test which courts and tribunals use as the civil standard of proof: a test designed to produce one outcome. The language of the statute is consistent with a number of realistic outcomes co-existing"

I have taken into consideration the evidence of the intentions from the Owner as part of the general consideration of the circumstances, however I do not agree that those intentions should be the determinative factor when determining whether this limb has been satisfied. If that were to be the case then it would be quite easy to avoid the listing of any premises by simply stating that you would never reopen the pub. The intention needs to be seen in the context of the whole set of circumstances. Whilst it may be the present intentions of the Owner not to reopen the pub, the legislation requires an estimate of what will happen in the next five years. No evidence was presented during the hearing that the pub before closing was not profitable. The current planning use of the Property is a public house. Whilst the Owner intends to convert the use of the Property to residential use, he does not currently have planning permission to do so. Planning permission for this change has been refused on more than one occasion and a further planning appeal against refusal of planning permission is due to take place next year. On the evidence which is before me, I must treat the grant of planning permission and the refusal of planning permission as realistic possibilities. One realistic outcome is that planning permission may be granted. A second outcome is that it may not be granted. If planning permission were to be refused, it may be the case then the Owner may decide that it may be time to cut his losses



and sell the business to someone who can successfully operate the Property as a pub or an alternative use which could further the social wellbeing or social interests. From the evidence which I have considered, section 88(2) (b) of the Act has been satisfied.

Miscellaneous

In the Owner's written submission a point was raised regarding the purpose of the ACV listing. My role as reviewer is simply to determine whether the Property should be listed as an Asset of Community Value. If this is the case, then the Property should be listed and no further justification is required for listing. There are arrangements for the Council to pay compensation to an owner who loses money as a consequence of an asset being listed.

Decision

For the reasons set out above, the tests in Sections 88 (2) of the Localism Act have been satisfied. On the basis that (1) an actual use of the Property has in the recent past furthered the social wellbeing or social interest of the local community; and (2) it is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the Property (whether or not in the same way as before) which furthers the social wellbeing or social interests of the local community, my conclusion is that the Pub is an Asset of Community Value. The Property will therefore remain on the list of Assets of Community Value.

If you are not satisfied with the outcome of this review you have the right to appeal to the First Tier Tribunal against my decision.

An appeal against the listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedure rules of the Chamber as 28 days from the date on which notice of the decision appealed against was sent to the Owner: see the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. Appeals may be made both on point of law and on findings of fact. Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk
Community Right to Bid Appeals
HM Court and Tribunals
First-Tier Tribunal (General Regulatory Chamber)
P.O. Box 9300
Leicester
LE1 8DJ

Owners may also send an appeal to the First-Tier Tribunal by email at:
GRC.CommunityRights@hmcts.gsi.gov.uk

Yours faithfully

Guy Slocombe
Director of Property, Investment and Estates