



Westminster City Hall
64 Victoria Street,
London SW1E 6QP

Mr Kerry Simpkin
Interim Licensing Policy and Strategy Manager

Tel: 020 7641 1840
ksimpkin@westminster.gov.uk

Date: 13 February 2019

Womble Bon Dickinson (UK)LLP
St Ann's Wharf
112 Quayside
Newcastle upon Tyne
NE1 3DX

Ref: WCC/ACVs/SOHO WH/REV

By email to
Antonia.murillo@wbd-uk.com

Dear Sirs

Review of decision to list the Hospital for Women, 29-30 Soho Square, London W1D 3QS (the "Property") as an Asset of Community Value under Section 92 of the Localism Act 2011 (the "Act") and Schedule 2 of the Assets of Community Value (England) Regulations 2012 (the "Regulations").

The Property was listed as an Asset of Community Value on 8th November 2018 ("Decision") as a result of a Nomination by the Soho Society ("Nominator"). The Decision to list the Property as an Asset of Community Value was made by Mr Andrew Barry-Purssell, ("The Original Decision Maker") on behalf of Westminster City Council (the "Council").

Your firm requested a review of the Decision on behalf of NHS Property Services Limited ("the Owner") by letter dated 19th December 2018. For the purposes of this Decision any references to the Owner shall include reference to you as the Owner's agent and legal adviser.

On 4th January 2019 it was confirmed that I would be reviewing the original Decision.

The Property

I note that the Property to which the nomination relates consists of 6 floors (Lower Ground Floor, Ground Floor, First Floor, Second Floor, Third Floor and Fourth Floor. The Property currently operates as the Soho Centre for Health and Care offer a range of primary health care and community-based support services. The Owner has stated that 70% of the property is largely administrative space, whilst the remaining 30% provides access to patients and groups associated with the treatment that's offered at the Property.



Grounds for Review

In summary, the Owner submits that the Property should not be listed for the following reasons, namely that

1. The Nomination is defective as it does not meet the requirements of Regulation 6 of the Regulations in providing a description of the nominated land including its proposed boundaries and the Nominator has had two chances to put together the application. This omission therefore renders the Nomination invalid.
2. The Property fails to satisfy the statutory requirements of sub-sections 88(1) and 88(6) of the Act, and the council are therefore requested to reconsider the previous representation from the Owner dated 25th October 2018 and the additional points raised the letter requesting this review (dated 19th December 2018).

The Review

I have carefully considered the Nomination Form, the letters comprising the grounds for review and submissions and supporting documents provided by all the Parties during the listing process which for ease of reference I will collectively call “evidence”. I have also considered relevant parts of the Act, the Regulations, relevant case law and the non-statutory Guidance issued by the then Department of Communities and Local Government – Community Right to Bid.

Grounds of the Review

1. The Nomination is defective as it does not meet the requirements of Regulation 6.

The Owners have stated that they believe that the listing of this property as an Asset of Community Value is invalid as the nomination is defective. The Owners have asserted that the Nominator did not comply with Regulation 6(a) of the Regulations, in that “A community nomination must include the following matters...(a) a description of the nominated land including its proposed boundaries”. The Owner states that this description was not provided within the Nomination application form which was sent to the Owner on the 27th September 2018.

The Nominator has specified the description of the property within their nomination form as “The Hospital for Women in Soho Square, 29-30 Soho Square, London. In reviewing the evidence associated with this nomination I have had regard to the land registry searches undertaken by the council associated with this property. I have also undertaken addition research as to the description of the property on the NHS website. The NHS website states that the Soho Centre for Health and Care is located at 30 Soho Square, London W1D 3QS.



The Nominator has not specified the floors or primary or ancillary uses of the Property. However, in my view the Nominator does not have to.

Having regard to the principles behind this the legislation and its purpose, the Government intended that local community groups would generate the majority of nominations. These groups may not have legal advisors and may not have access to large amounts of data associated with the premises. Therefore, the extent of detail available to nominators may be limited to the address of the property or a description of the where it is located.

In this case the Nominator has described to property via the address. The Original Decision Maker, when considering this nomination was clear to what property the nomination related. The Owners view is that there is a sufficient lack of information that describes the nominated land including its proposed boundaries. However, this property it is commonly known as the Women's Hospital at the address provided within the nomination form.

Grounds 1 Decision

With respect to the grounds in 1 in which the review has been requested I believe that the Original Decision Maker was correct in their Decision based on the representation and evidence before them at that time. Having reviewed this specific ground for the review I find no reasons to invalidate the nomination for listing. The Nominator has provided sufficient detail relating to the nominated description of the land to enable the council to accurately list the Property as an Asset of Community Value.

2. The Property does not meet the statutory requirement of section 88(1) and 88(6) of the Act

The Owner's position is that the Property does not meet the statutory requirements of section 88(1) and 88(6) of the Act. These sections state:

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 interest of the local community.

- (6) In this section –



...

“social interests” includes (in particular) each of the following –

- (a) Cultural interests;
- (b) Recreational interests;
- (c) Sporting interests

The Owners state that the evidence provided does not satisfy subsection 88(1) of the Act as the uses that have been put forward as part of the nomination listing are ancillary to the main use of the Property to provide health care functions. The Owners submission is that the Act is intended to capture facilities that genuinely contribute to the cultural, recreational or sporting interests of the community. Listing an operational healthcare facility as an Asset of Community Value would be out of keeping with the social characteristics or other types of Assets of Community Value.

The Owners in both their original representation and in the letter requesting this review have stated that a small part of the Property, approximately 30% is accessible by the public and some of the access is limited to those who have medical appointments. The plans within the review letter set out where the public have access and where no public access is permitted. The Owner states that the use of the parts of the property where the public are not permitted are generally used for administration offices.

To consider the key statutory test of Subsection 88(1) of the Act there is a need to break down the test to establish the key points and whether this Property meets this test.

The current use of the premises is clearly to benefit the local community. Although the Property operates as a healthcare centre it does offer a wide array of services. The evidence provided by the Nominator demonstrates that the Property does provide wider services that support and benefit the local community.

The Act does not define what social wellbeing is but it does list examples of social interests in section 88(6) of the Act. This list is not exhaustive, and the Council can take into account other facilities provided at the Property that are not expressly mentioned as categories in subsection 88(6) of the Act. The question for the Council will be whether those facilities further the social wellbeing and social interests of the community.

The ability for Councils to consider what may be of community value locally was a key point discussed during the passage of the Bill through Parliament. During that process the government stated that “...it is the Government’s intention to set out a definition of an asset of community value in regulations that will require local authorities to judge whether an asset meets that definition in particular circumstances”¹.

¹ Baroness Hanham (Parliamentary Under-Secretary of State, Department for Communities and Local Government), House of Lords committee, stage, 6th sitting, 7 July 2011, col 401



The Government similarly recognised that “what is of community value will differ in different places. One can imagine different assets coming to the attention of an inner urban community, a remote rural area and a suburban area, so we do not envisage a universal set of things that will be of community value. However, we intend to provide a definition through regulations... to establish the matter to which local authorities will need to have regard, albeit accepting that there might be different criteria even within an authority area.”²

The approach taken by the Original Decision Maker is in line with these principles. In his Decision he stated that “The categories (subsection 88(6) of the Act) are given as particular examples of what might constitute “social interests” and are so are explicitly not intended to be exclusive of exhaustive in nature.”

The Owner has stated that the areas where the public can access are limited to parts of the ground, first and second floors, as indicated in the plans provided in the letter dated 19th December 2018. The Owners state that this area is a small percentage of the building which is in use. The other areas of the Property are either used for administration functions or are vacant (third and fourth floors) and do not relate to the services provided at the Property.

The question relating to the primary use of the building is a key element of this test. In this regard the Original Decision Maker considered this element in some depth.

The Owner has stated that “only a very small proportion of the building is publicly accessible for patients to access health services (the majority of which have appointments to attend).” The Original Decision Maker considered access and this specific point. He stated that “I... do not think that the proportion of those attending with appointments is determinative. Indeed, the fact the ground floor is used as a drop-in centre and some Chinese Healthy Living Centre’s services are provided on a drop-in basis may mean the proportion of those with formal appointments may be rather lower here than is typical for a health centre.”

The Original Decision Makers view was that the administrative offices of the building enable the primary use of the community and health services to be carried out. It is clear with most properties where the public are permitted there will be areas that the public cannot or are restricted from entering. These are often the servicing and administrative areas of the building. The Property is primarily a health centre and related community services with office accommodation as the ancillary and supporting use. The services provided through the health centre do further the social wellbeing and interests of the community.

I have also reviewed, as part of the evidence the decisions provided by the Owner from other local authorities on other healthcare properties. I also found these not to be relevant to this case for the same reasons as specified by Original Decision Maker.

² Andrew Stunell (Parliamentary Under-Secretary of State for Communities and Local Government), House of Commons, HC Public Bill Committee, 12th sitting, 10 February 2011, col 512.



The Owners state that the Nominators will not be able to meet the test associated with the continue use of Property as an Asset of Community Value. The primary reason given is the cost in purchasing and maintaining the Property. The Owner has stated that the Original Decision Maker did not consider this as part of their considerations for listing. I disagree as the Original Decision Maker clearly has considered this point on page 7 of his Decision. The Act doesn't specify that there is any need for the Nominator to provide evidence of their ability to purchase the property at this stage.

Ground 2 Decision

The Original Decision Makers rationale and grounds for his Decision clearly set out the considerations to the statutory test in deciding whether the Property should be listed. I agree with the rationale, interpretation and pragmatic approach to applying the relevant sections of the Act and Regulations.

The Original Decision Maker specifically considered whether subsection 88(1) and Subsection 88(6) apply here. I believe that the current and future use of the Property will be primarily to further the social wellbeing and social interests of the community. The wide range of services that this Property is used for are clearly provided for the local community. This in my view doesn't appear to be likely to change. The Act does not define "Social Wellbeing" and subsection 88(6) provides examples of "Social Interests" rather than a prescribed list. The Council has to consider the local circumstances and evidence provided to determine whether this Property can be Listed. It cannot have a blanket approach to this function and decision made for other properties in other locations cannot necessarily be used due to the diverse differences in the local community, the use of the property and the area it is located in.

I do not believe that there are any reasons to suggest that the use of this Property is likely to change in the near future. I also do not feel that it is relevant to take into account whether the Nominator is likely to have sufficient funds to purchase and maintain the property. I share the Original Decision Makers in that if the Owner were to seek to change the Property in a way that would depart from the current primary use then a planning application would be required. I also agree that another social or community use is a realistic proposition if the property were to be sold or amended in anyway.

Having considered all of the evidence I agree with the Original Decision Makers decision to list this property excluding the electrical transformer in the basement as an Asset of Community Value.

Appealing the Review Decision

If you are not satisfied with the outcome of this review you have the right to appeal to the First Tier Tribunal. The deadline for appealing is specified in the procedure rules of the



City of Westminster

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

Mr Kerry Simpkin
Interim Licensing Policy and Strategy Manager
Policy, Performance and Communications

C.C The Soho Society