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Ref: WCC/ACVs/INDIA/REV

For the attention of Mr M Brown
Freeths LLP
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**By email only to
Mark.Brown@freeths.co.uk**

Dear Sirs

Review of decision to list the First and Second Floor of 143 – 145 Strand, London WC2R 1JA (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 2nd 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-Pursell, (“The Original Decision Maker”) on behalf of Westminster City Council (the “Council”).

Your firm requested a review of the Decision on behalf of Marstons Properties Limited (“the Owner”) by email on 14th November 2018, although the grounds for requesting the review were not supplied to the Council until 6th 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 the 30th November 2018 it was confirmed that I would be reviewing the Decision.

On the 4th January 2019 the Council advised the Owner that it intended to extend the deadline for the listing review of 143 - 145 Strand to the 2nd February 2019. The reason for extending the deadline was to enable time to review the grounds for the listing that were submitted late and gather any additional evidence if required.



The Property

I note that the Property to which the nomination relates consists of 6 floors which consist of 1st Floor – India Club Bar and Lounge, 2nd Floor – India Club Restaurant, 3rd Floor – Hotel Rooms, 4th Floor – Hotel Rooms, 5th Floor – Hotel Rooms and 6th Floor – Hotel Rooms

Grounds for Review

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

- A. The Nomination is not a community nomination, because it is defective and the effect of the defect is to render the Nomination invalid.
- B. The nominated land (assuming, without prejudice to Ground A, that the Decision Notice correctly identifies the boundaries of the nominated land) is exempt from Asset of Community Value listing by virtue of Regulation 3 and Schedule 1 of the Regulations.

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

A. The Nomination in not a community nomination.

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 of the Regulations, in that “No full or proper description of the nominated land including its proposed boundaries” and “No full or proper statement of all the information which the nominator has a) the names of current occupants of the land, b) the names and current last-known addresses of all those holding a freehold or leasehold estate in the land, and c) evidence that the nominator is eligible to make a nomination”.

The Original Decision Maker considered Regulation 6(a) of the Regulations in whether the community nomination must contain a description of the nominated land, including its



proposed boundaries. The Nominator has given a clear description of the premises to which the Asset of Community Value listing should apply.

There is a requirement under Regulation 6(b)(i) and (ii) of the Regulations that require the nomination to include a statement of all the information which the Nominator has with regard to (i) the names or 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. The Nominator has provided the information that they were aware of in regard to the key requirements of Regulation 6(b). I cannot see any reason or evidence to suggest that information was withheld by the Nominator upon application and during this listing process. The Original Decision Maker has undertaken reasonable steps to ascertain information on the occupants of the land and anyone who holds a freehold or leasehold estate in the land.

I have reviewed the original nomination form and accompanying evidence provided by the Nominator. I have reviewed the charitable status of the Nominator and the evidence provided by them of the membership for their organisation. In doing so I have ascertained that the Nominator does meet the requirements of Regulations 4(b) and (c) (had a local connection and 21 members) and 5(1)(c) of the Regulations (was a charity).

Grounds A Decision

With respect to the grounds in A in which the review has been requested I believe that the Original Decision Maker was correct in their Decision. I find no reasons to invalidate the nomination for listing. The Nominator has provided sufficient detail relating to the nominated land. I have found no evidence to suggest that the Nominator did not provide all of the information that they had available to them regarding the names or current occupants of the land, and the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land. Have had regard to all of the evidence and after making my own enquiries I believe that the Nominator was eligible to make an Asset of Community Value nomination in accordance with Regulation 6(d) of the Regulations.

B. The Nominated land is exempt from listing

The Owner's position is that the First to the Sixth Floors (inclusive) of the Property, which include hotel rooms, and a bar and restaurant (which is referred to as the "Nominated Land") is exempt from being listed as an Asset of Community Value by virtue of Regulation 3 and Schedule 1 of the Regulations. The reasons for this view are that:

1. the extent of the Property is a "hotel" and is a "residence",
2. the whole of a "hotel" is a "residence", not just the residential parts (i.e. the guest rooms) of that hotel,
3. the "Nominated Land", which the council has assumed includes the bar, restaurant and guest rooms (i.e. floors one to six inclusive), is a "hotel",



4. the Nominated Land is therefore exempt from listing by virtue of Regulation 3 and Paragraph 1 of Schedule 1 of the Regulations.

The Owner has set out their argument as to why the Nominated Land is exempt from listing in their letter dated the 6th December 2018.

The Original Decision Maker has clearly considered whether or not the Property could be listed as an Asset of Community Value. The Original Decision Makers Decision sets out in great detail the rationale that he applied when considering this point and how he came to the decision he did.

I do not intend to repeat the Decision here but in undertaking the review I have considered the representations from the Owner of their interpretation of the law, the Original Decision Maker's interpretation and sought my own legal opinion on this point.

The Original Decision Maker in coming to his Decision took into account the information available to him and also conducted a site visit. He set out in detail his rationale and thought process for coming to the decision that he did to list the First and Second floors of the Property only.

The First Floor contains the India Club Bar and Lounge and the Second Floor use is the India Club Restaurant. These two floors are not residential. The Third to Sixth Floors do contain 26 rooms that form the residential part of the Hotel. I accept the argument that the Property operates as a Hotel which is clear from the evidence. However, I also can see from that the First and Second Floors are clearly of community value as required by Section 88 of the Act. The Original Decision Maker has, as I have had regard to the evidence provided by the Nominator and through the investigation during the listing process.

I do not feel, based on the evidence provided that the First and Second Floor uses are not ancillary to the Hotel (Third to Sixth Floors). The Original Decision Maker stated that "it is clear that the restaurant and bar areas of the Property have a reputation and attract a clientele quite independent from the hotel. It is without doubt that they are used by a wide range of local workers, including those from neighbouring academic institutions. They clearly have a unique attraction to people from or connection to India. They host meetings of organisations like the Tropical Agriculture Association, the Indian Journalists' Association and the Curry Club which are clearly linked to the unique character and history of the restaurant and bar rather than the hotel". I completely agree with this statement and that the historical and social relationship associated with this building are particularly relevant when considering the community value of the Property.

Turning to the considerations associated with whether Paragraph 1(5) of Schedule 1 of the Regulations should apply I have considered the evidence and had regard to the Wellington Pub Limited v Kensington & Chelsea BC (CR/2015/0007) judgement which is useful in this case. Judge Lane gave general guidance on how paragraph 1(5) is to be applied. If there is



a current physical and functional relationship between the residential part and the remainder then the remainder can also be listed as an Asset of Community Value. In Wellington Pub Limited the whole of the building had been listed and on the facts of that case the whole building should continue to be listed.

The Wellington Pub case does not set precedent to say that the whole of the Nominated Land, in this case should be listed. Indeed, there is a difference between that case and this in that this Property does not have the same physical and functional relationship between the uses on the First and Second Floor and the rest of the building.

The Owners in this case have taken a literal interpretation of Paragraph 1(1) and 2(b)(iii) of Schedule 1 of the Regulations. However, in my view the government intended to enable listing authorities to apply Paragraph 1(5) of that Schedule (exemption from the residential exemption) to list buildings where part of the land was used as a residence and that apart from that residential use the land would be eligible for listing.

Ground B Decision

The Original Decision Makers rationale and grounds for his Decision clearly set out his 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 the regulations permit a part listing given the unusual facts of this case. In my view the Original Decision Maker in coming to his Decision has made a fair and sensible decision.

With respect to the grounds in B in which the review has been requested it is my view that the residence in this case (the Hotel rooms) does form part of the building. I also believe that the First and Second Floors of the Property are of community value and meet the requirements of Section 88 of the Act. I see no reason that the First and Second Floors therefore cannot be listed as an Asset of Community Value and that the Third to the Sixth Floors of the Property, which don't add to community value can be excluded from the listing.

I believe that in this case the exemption from the residence exemption (Paragraph 1(5) of Schedule 1 of the Regulations) can be applied in the way set out by the Original Decision Maker within his Decision.

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 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



City of Westminster

Chamber) Rules 2009 (as amended). 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
General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

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

Yours faithfully

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

C.C The Soho Society