



# City of Westminster

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My reference: HT/LEGAL/30099856

Please ask for: Barbara Brownlee

6 June 2016

**By Post and by email to**  
**Mark.Brown@freeths.co.uk**

Dear Sirs

**Review of decision to list The Prince of Wales Public House, 351 Harrow Road, London W9 3RS (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 Prince of Wales Public House was listed as an Asset of Community Value on 27 November 2015 ("Decision") as a result of a Nomination by Mr Toby Gale on behalf of Westbourne Neighbourhood Forum ("Nominator"). The Decision to list the Property as an asset of community value was made by Mr Barry Smith, ("The Original Decision Maker") on behalf of Westminster City Council.

Your firm requested a review of the Decision on behalf of Mesari Limited ("the Owner") by email of 22 December 2015, although the Owner's grounds for requesting the review were not supplied to me until 26 January 2016. 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 29 January 2016 it was confirmed that I would be reviewing the Decision.

On 3 February 2016, you advised that you intended to submit further representations regarding the grounds of the review. The Owner's additional ground of review in relation to treating the upper floors of the Property differently to the ground floor of the public house was sent to me under cover of a letter dated 10 February 2016.

On 15 February 2016, I wrote to the Original Decision Maker and the Nominator, enclosing the grounds of the review (comprising the letters of 26 January and 10 February 2016) confirming that the review would be determined on the papers and setting out the timescale for comments to be received, if these Parties wished to comment on the grounds for review. This meant that the latter Parties needed to provide their comments to me by 7 March 2016. I allowed the Owner an opportunity to provide comment on any submissions received from the Original Decision Maker and the Nominator by 23 March 2016. An email was sent to you on 18 February, confirming my directions.

On 23 February 2016 you submitted a letter and claim for compensation as a result of the listing. This claim is not relevant to my determination and is being dealt with by the Original Decision Maker, on behalf of Westminster City Council.

On 7 March 2016, the Original Decision Maker submitted their response to the review advising, that having considered the Owner's grounds of review he considered that the Property should not be removed from the list of assets of community value. No comments were received from the Nominator. A copy of the Original Decision Maker's submission was sent to you on 9 March and I received your further comments on 23 March 2016.

**Westminster City Hall**  
**64 Victoria Street**  
**London SW1E 6QP**

### **Additional information needed**

Having considered the written representations submitted by the Parties, I considered that further information was needed from the Owner to ascertain who was and had been occupying the upper floors and whether they were connected with the public house to assess whether the upper floors should be excluded from the listing. I also considered it would be helpful if the Nominator could provide further details of how the Property furthered the social wellbeing and social interests of the community, in light of the Owner's contentions.

Consequently, on 15 April 2016, I sent a list of questions to both the Nominator and the Owner and asked for a response by 25 April. I also allowed for further comments to be received from the opposing Party by 3 May regarding any answers provided. You provided a response to the questions raised on by letter dated 25 April. The Nominator confirmed on 1 May that he did not wish to make any further comment. The Original Decision Maker confirmed the same on 5 May, although he did provide a copy of the petition received by the Council on 20 April 2016 which included a list of twelve names asking for the Property to be delisted.

### **The Property**

I note that the Property consists of a public house on the ground floor and basement, with two upper floors of residential accommodation. It is situated on the corner of Harrow Road, with the junction of Great Western Road. I am also mindful that on 17 September 2015, planning permission was granted to convert the upper floors of the Property into 6 residential flats. I am told that the public house closed in November 2014 when the Premises licence (which allowed the pub to sell alcohol) was revoked by the Council's Licensing Committee, following a review of the licence.

### **Grounds for Review**

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

- (1) the Original Decision Maker took certain matters into account which should not have been taken into account when reaching his decision;
- (2) there is insufficient evidence that the whole of the Property is of a "community value" and therefore the application fails to satisfy Section 88 (2)(a) of the Act; and
- (3) the Nominator has failed to establish that it is realistic to think that there is a time in the next five years that there could be a use of the Property which furthers the social wellbeing or interests of the local community; and
- (4) in the alternative, the Owner submits that the upper floors of the Property should not be listed as planning permission has been granted to create 6 new residential flats and the Owner is implementing that planning permission.

### **The review**

I have carefully considered the Nomination Form, the letters comprising the grounds for the review and submissions and supporting documents provided by all the Parties to the Review, which for ease of reference I will collectively call "evidence". I have also considered relevant parts of the Act, the Regulations and the non statutory Guidance issued by the Department for Communities and Local Government – Community Right to Bid (the "Guidance").

I note that the Nominator is the Westbourne Neighbourhood Forum and it has made a valid community nomination within the meaning of the legislation.

There is no dispute from the Parties that the Property closed back in 2014. In the circumstances the issue for me to decide is whether the Property falls within Section 88(2) of the Act. Section 88(2) of the Act states that a building or other land could be land of community value if the Local Authority is of the opinion that :

- (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 underlining is my emphasis.

### **Turning to the Grounds of the Review**

#### **(1) the Original Decision Maker took certain matters into account which should not have been taken into account when reaching his decision.**

I recognise that the Owner disputes many of the findings reached by the Original Decision Maker, as set out in your letters of 26 January, 10 February and more recently 23 March 2016. However, the review of the decision to the list the Property is a fresh assessment of the application. My assessment will be based on all the documentation submitted to me as part of the review and the other documentation submitted as part of the original nomination. I am not bound by the Original Decision Maker's decision and I do not propose to carry out a forensic analysis of the Original Decision Maker's reasons for listing the Property. I intend to consider the evidence afresh based on the grounds of the review and all the submissions supplied by the Parties, which have been received as part of this Review.

Having said that I consider it is important to comment on the following points made by the Owner:-

- (i) Paragraph 14 of your letter of 23 March 2016, contends that neither the "Nomination Form nor the Nominator's representations within it have the status of evidence." It goes on to allege that the Nomination Form does not contain "a statement of truth or any other attestation to the truth of its contents (nor is it signed in any event).... And so the Nomination Form cannot be relied upon in and of itself as evidence of the matters it describes".

I do not agree with this assertion and this is not supported by the legislation. Section 89(5) of the Act empowers the appropriate authority, where it wishes to so to do, to make regulations as to the procedure to be followed when considering whether land should be included in the list of assets of community value. Neither the Act, the Regulations nor the Guidance (referred to below) require the Nomination Form to be supported by a Statement of Truth (which is often required in some forms of Court proceedings). Similarly, there is no requirement for the Form to be signed. To suggest that I as the decision maker cannot take into account the contents of the Nomination Form or any additional information it contains is not only incorrect, but it would also infer a heavier burden on the Nominator than parliament had intended.

Moreover, if that were the case, there would be an argument for saying that I could not take into account the letters and other documentation provided by you or the Owner. Neither the grounds of review nor the supporting information has been supported or verified by a Statement of Truth. Moreover, many of the assertions made in your documents are also not

supported by evidence. However, I am entitled to consider all the documentation provided by the Parties and decide what weight I wish to attach to such information.

Another point of relevance is there is no requirement at the initial application stage for the Council to consult or canvass the views of the Owner of property as to whether the property should or should not be listed. The legislation simply requires the Original Decision Maker to notify the Owner that an application is being considered and to assess the application based on the Nomination Form and any supporting documentation provided.

- (ii) Paragraph 13 of your letter of 23 March 2016, also suggests that the decision maker cannot take into account views of local ward councillors and local politicians when determining the application. I do not agree. It is perfectly legitimate for locally elected councillors and a local member of parliament to make representations in support or opposition of an application for listing. Ward councillors may well have knowledge of whether the property in question is of a community value and it is for the decision maker to assess the evidence produced.
- (iii) The Owner asserts that the Original Decision Maker was not entitled to take account of representations received as part of the previous planning application to change the use of the public house into a betting shop. However, conversely, the Owner is asking me to take into account the reasons why the licensing committee revoked the alcohol licence and the representation made by Maya Vuksa in relation to the licensing review. This is an unreasonable stance to take and I have therefore considered all the information provided by all the Parties, which is relevant to my assessment of the application under the Localism Act.

## **Ground 2**

### **(2) there is insufficient evidence that the whole of the Property is of a “community value” as set out in Section 88 (2)(a) of the Act**

This ground relates to the first limb of the test set out in Section 88 (2)(a) of the Act, which states that in order for the Property to be listed the Local Authority must be satisfied that the Nominator has established :-

*“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, furthered the social wellbeing or interests of the local community*

Section 88 (6) of the Act defines “social interests” to include cultural, recreational and sporting interests”, which can have a wide meaning and will depend on the facts and evidence before me, the decision maker of this Review.

The Prince of Wales public house has been located at 351 Harrow Road for many years. In order to assess whether the Property in the recent past had an actual use which furthered the social well being or interests of the local community I have to consider the documentation and submissions before me, which for ease of reference I shall describe as “evidence”.

The Nominator states that:-

- “The Prince of Wales has been a *significant landmark* locally... It *stands at the heart* of a district centre, now called Maida Hill..”;
- “As with any such long-lived establishment *its character, and its social and community value*, has changed through its history but the *Prince of Wales has always served very much as a pub for local people*”;

- “With Maida Hill going through a period of regeneration and change. The Prince of Wales *has a critical part to play*. This should be consistent with its historic function as a pub and a *social space*”;
- *“In particular the Prince of Wales has been a centre for the Irish Community of Paddington and Kilburn for many generations. In the past 20 years it has provided music and dancing at weekends. The dancing is part of the Irish culture... It has also been used by the community as a centre for celebrating St Patrick’s day. Also since 2009 the Prince of Wales has been the main sponsor of the “Harrow Road Goes Irish” festival which takes place on the last Sunday afternoon in July on the Maida Hill Market”.*

Whilst this evidence may have been sufficient to justify the initial listing, I have to consider the application in light of the objections received from the Owner or any other parties.

The Owner acknowledges that public houses are capable of furthering the social wellbeing or interests of the local community. However, the Owner argues when you examine the information provided by the Nominator this basically amounts to “general, bare and unsupported” and unsubstantiated statements rather than any actual detail of the activities which took place in the recent past, when they took place and over what period. The Owner contends that there is no detail of what music and dancing took place at weekends, and whether this was separate to the normal functions provided by the public house. The Owner also suggests that the use of the public house for celebrating St. Patrick’s Day, took place as an ancillary commercial use of the pub. In relation to the sponsorship of the “Harrow Road Goes Irish festival”, the Owner submits that no actual community use has been identified in relation to the Prince of Wales public house. The Owner says there is no evidence that the public house actually hosted the festival or actually took any part in it. I agree with these views.

I gave the Nominator the opportunity to provide more detail about the activities which it considers furthers the social wellbeing and interests of the local community but no further information was forthcoming. In contrast, I have received a petition dated 20 April 2016, which was incidentally provided to me by the Original Decision Maker and which goes to his impartiality and fairness in dealing with the review. The Petition contains twelve names from individuals asking for the Property to be removed from the list of the assets of community value. It states that “the previous pub did not positively contribute to the community and had a strong history of encouraging anti-social behaviour in the area”. This is quite a general statement and no specifics have been provided. The Owner produced a copy of the Licensing Officer’s letter dated 23 June 2015. This was written in response to the application for licence for a betting office, which includes some crime statistics, most of which relate to the Harrow Road as a whole, but six criminal offences are linked to this Property specifically between March 2013 and February 2015.

I note that the previous landlord is currently serving a prison sentence due to an assault which took place at the Property in October 2014 and this was the primary reason why the licence was revoked. I do not agree that the Nominator needs to show that the “majority” of the community regard the Property as a community value. The legislation does not require this, so the test could be satisfied if the Property was shown to further the social wellbeing or interests of a section of the community, such as the Irish community, in this case. The Owner alleges that the Prince of Wales public house contributed to crime in the area and contributed to the sense of lawlessness around the piazza. There is no specific evidence to substantiate the allegation about lawlessness of the piazza. However, unless further evidence is produced to contrary, there is evidence that it has been a cause of anti-social behaviour and associated with criminal incidents which would not further the social wellbeing or interests of the local community. On balance in this case and based on the evidence before me I am not satisfied that 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 at this stage. Whilst some evidence has been produced by the Nominator, it lacks specific detail of the activities which took place, when they took place and over what period. I am not convinced that for example the music and dancing etc was not provided as part of the general use of the public house.

## **Turning to Grounds (3) and (4) relating to the second limb of the test in Section 88(2)(b) of the Act**

The test is:

- (b) *"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.*

As the Nominator has failed to produce sufficient evidence to establish the first ground of the statutory test in section 88(2)(a) of the Act, I do not need to go into too much detail about the second test. However, the fact the public house lost its licence due to the actions of one operator does not necessarily mean that another operator could not run the public house in such a way that it would further the social interests of the local community. I just need to assess whether there is a realistic prospect of a non-ancillary use of the Property that would further (whether or not in the same way) the social wellbeing or social interests of the local community in the next five years.

I note that the Local Planning Authority granted permission on 17 September 2015, to convert the existing upper floors, (including the extensions at first and second floors level and the mansard roof extension) into six residential units of accommodation, whilst retaining the pub use at ground level. This is relevant to second limb of the test. The Owner contends that it is implementing this permission, so there will be a certain cessation of any physical and functional connection between the public house and the upper floors. This contention is also supported by the Owners answers to the questions raised in April 2016, which indicates that the upper floors have not been used in connection with the public house in the past and will be used for residential purposes in future.

In terms of the public house element of the Property on the ground and basement floors the Owner has made it clear that he has no intention of reopening the public house and that notwithstanding the refusal of the previous planning application, that he will continue to pursue further applications in the future. The Owner's intention carries weight but it is not determinative.

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"*

### **Conclusion**

Based on the current evidence before me, at the present time, I am not satisfied that it is realistic to think that within the next five years:-

- (i) the upper floors of the Property will be used to further the social wellbeing and social interests of the local community and/or
- (ii) the public house on the ground and basement of the Property will be used to further the social wellbeing and social interests of the local community. I therefore conclude the second limb of the test under Section 88(b) has not been satisfied.

## Decision

For the reasons set out above, the tests in Sections 88 (2) of the Localism Act have not been satisfied. The Property should be removed from the list of assets of community value immediately.

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](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)

Yours faithfully



Barbara Brownlee  
Director of Housing and Regeneration  
Westminster City Council

C.C Mr Toby Gale for the Westbourne Neighbourhood Forum  
Mr Barry Smith