

REVIEW OF DECISION

EAST BOLDRE POST OFFICE AND STORES, MAIN ROAD, EAST BOLDRE

1. Review of Decision – East Boldre Post Office and Stores, Main Road, East Boldre

See accompanying documents

REVIEW REPORT TO ALAN BETHUNE

REVIEW OF LISTING AS AN ASSET OF COMMUNITY VALUE

East Boldre Post Office and Stores, Main Road, East Boldre, Brockenhurst SO42 7WD

1.0 INTRODUCTION

- 1.1 The Localism Act 2011 ('the Act') gives local groups a right to nominate a building or land for listing by the local authority as an "asset of community value" ('ACV'). An asset can be listed if a principal ('non-ancillary') use of the asset furthers or has recently furthered the local community's social wellbeing or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future.
- 1.2 East Boldre Post Office and stores, Main Road, East Boldre, Brockenhurst SO42 7WD ('the Property') was nominated as an ACV by East Boldre Community Stores Ltd ('EBCS'). On 1 November 2021 Manjit Sandhu, Executive Head of Operations, acting under delegated powers from the Council, decided to list the Property as an ACV pursuant to Section 88 of the Act.
- 1.3 The owner of the Property, Mr Ian Evans ('the Owner'), has requested a review of the Council's decision to list the Property as an ACV. As the Owner has not requested an oral hearing, the Council may decide whether or not to include an oral hearing in the review process (Assets of Community Value (England) Regulations 2012 ('the Regulations'); Schedule 2, 7(2)). This review will therefore proceed by written review. The Council's Executive Head of Financial and Corporate Services, Alan Bethune, will undertake the review. He was not involved in the original decision and has delegated authority from the Council to determine such matters.

2.0 BACKGROUND

- 2.1 EBCS lodged a nomination of the Property for listing on the ACV list on 6 September 2021. A copy of the nomination dated 5 September 2021 is at **Appendix 1**.
- 2.2 The report prepared for the Executive Head of Operations, is attached at **Appendix 2** ('the Report'). This included EBCS's nomination, a plan of the Property, together with two emails from the Owner dated 6 and 8 October 2021 in response to the notification of the nomination. EBCS was accepted as being entitled to make the nomination (see paragraph 3.2 of the Report).
- 2.3 The Owner is the freehold owner of the Property. The Property is presently used as a post office and retail shop and the Owner also runs the post office. EBCS, as a registered society for the benefit of the community under the Co-operative and Community Benefit Societies Act 2014 (registered by the Financial Conduct Authority on 8 October 2020) intend to take over and run the Property - see section 3.0 of the Report which addresses the nomination and EBCS's intentions as regards the Property.
- 2.4 The decision to list the Property as an ACV was made, and all parties were notified, on 1 November 2021.

- 2.5 On 19 November 2021, the Council received a request from Ken Parke Planning Consultants ('the Consultants'), acting on behalf of the Owner, for service of the "*paperwork and documents relating to the ACV nomination/designation...*". After obtaining the Owner's authority and making appropriate redactions, the Council served those papers on the Consultants on 29 November 2021. Nothing further was heard from the Consultants and on 22 December 2021, the Owner submitted a request for a review of the decision to list the Property as an ACV – **see Appendix 3** – he did not request an oral hearing.
- 2.6 Under paragraph 9 of Schedule 2 of the Regulations, the Council must complete the review by the end of the period of eight weeks beginning with the date it received the written request for the review or such longer period as is agreed with the Owner in writing. That eight week period will expire on 16 February 2022.
- 2.7 Having considered the Owner's written request to review the decision, the Council has not sought EBCS's comments. The Owner's assertion in his email of 22 December 2021 that "*...it is unlikely that the only interested group, and I, will not be able to agree on sale price and further my opinion that the funding process in any event will fail.*", does not engage EBCS's arguments for listing the Property as an ACV nor do they require EBCS's response.

3.0 SUMMARY OF RELEVANT LEGISLATION

- 3.1 Under the Act, an asset is of community value if in the opinion of the local authority,
- (i) 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
- (ii) 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 (Section 88 (1) of the Act).
- "Social interests" include cultural interests, recreational interests and sporting interests (section 88(6) (a)-(c) of the Act).
- 3.2 Land can also be nominated as an ACV which has furthered the social wellbeing or social interests of the local community in the recent past (s.88(2)(a) of the Act) and it is realistic to consider will do so again during the next five years (s.88(2)(b) of the Act).
- 3.3 Neither the Act nor the Regulations give an express definition of what use "furthers the social wellbeing or social interests of the local community". It is for the local authority to decide depending on all the circumstances of the particular case.
- 3.4 If the local authority is satisfied the nomination is valid and the nominated asset is land of community value, then the local authority must add the land to its list of assets of community value.
- 3.5 An owner is entitled to seek a review of the decision pursuant to Section 92 of the Act provided the request is made within 8 weeks of notification of the decision. The request for the review in this case was made within this time limit and is valid.
- 3.6 This review comprises a review of the written representations made by the Owner and other documentation listed in the Appendices below by the Executive Head of

Financial and Corporate Services of the Council, who is an independent senior officer of the Council not involved in the original decision.

4.0 SUMMARY OF THE REVIEW

4.1 The review will consider a number of matters, including those set out in headings A – C below.

A. Is the Property within the Council's area?

4.2 The Council can only list assets of community value in its area. There is no dispute that the Property is within the area of New Forest District Council.

B. Is the nomination valid?

4.3 The Council was satisfied that the nomination was valid for the reasons explained in the Report. The Owner made no complaint about the validity of the nomination and the view of the Council remains that the nomination was valid.

C. Is the Property of community value?

4.4 The Council must list the Property as an ACV if, in the opinion of the Council, 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
- 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 (Section 88 of the Act).

4.5 “social interests” can include cultural, sporting or recreational interests (Section 88(6) (a)-(c) of the Act).

4.6 Neither the Act nor the Regulations give an express definition of what use “furthers the social wellbeing or social interests of the local community”. It is for the local authority to decide depending on all the circumstances of a particular case. Examples of possible uses could include a village shop, pub, community centre or allotments.

4.7 The Council accepted that the Property should be listed as an ACV as set out in the Report, attached at **Appendix 2**.

4.8 The Owner has sought a review of that decision in his email of 22 December 2021 (**Appendix 3**) and his comments are summarised in paragraph 5 below.

5.0 SUMMARY OF OWNER'S CASE

5.1 In his email of 22 December 2021, other than referring to negotiations of the sale of the Property, the Owner only states that he is “...*yet to instruct a professional representative...*”. Therefore, since the listing of the Property as an ACV, the Owner has made no assertions or raised any arguments against the listing of the Property as an ACV.

5.2 In reply to receiving notice of the ACV nomination in September 2021, the Owner's email of 6 October 2021 commented expansively and this is referred to at section 4 of the Report. However, in his request for a review, the Owner has not expressly referred back to those comments, or his email of 8 October 2021. Those comments

have, of course, previously been taken into account in the original considerations as to whether the Property should be listed as an ACV.

- 5.3 The Owner's submissions do not specifically challenge the validity of the ACV listing.

6.0 CONSIDERATION OF OWNERS' SUBMISSIONS

- 6.1 The Owner has previously questioned (as referenced at section 4 of the Report) whether there will be enough custom to allow the Property to continue long term as a going concern and also raises his unease about possible adverse effects on his ability to sell the Property either to EBCS or otherwise. However, as explained in section 4 above and 7 below, these are not valid challenges to the decision to list the Property as an ACV.
- 6.2 Perhaps the closest the Owner comes to challenging the legitimacy of the Property's nomination is when he states in the email of 6 October 2021, that "*...I believe the application should fail in its inability to comply with section 88 of the Act*" (see paragraph 4.4 of the Report). However, he does not expand or explain why he believes that.
- 6.3 It has been found that if an asset can "*...provide a meeting place for members of the local community and it does encourage social interaction...That is sufficient to meet the statutory requirement*" and if it is "*realistic*" to think that use can continue, then that will satisfy the required criteria (Adams v Asfield DC & Anor UKFTT CR-2017-0010 [2018]).
- 6.4 Given the very thorough and comprehensive business plan that EBCS has submitted, it would seem realistic that it will continue to provide a meeting place for social interaction and with an intention of doing that "*during the next five years*" (see paragraph 3.2 above).
- 6.5 Therefore, since the email responses to the nomination dated 6 and 8 October 2021, the Owner has not submitted any new evidence to question the validity of the Council's decision to list the Property. So as not to repeat the same text, his previous arguments can be reviewed at section 4 of the Report. Those arguments however, were not considered to be persuasive in refusing to originally list the Property as an ACV.

7.0 DECISION

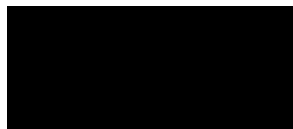
- 7.1 The Council is satisfied the nominated Property is within its area and that, for the reasons explained in the Report, the nomination is valid in accordance with the Act. The Owner has raised no substantive objection in respect of those matters.
- 7.2 The issue in this Review is whether the Property is an ACV pursuant to s.88 of the Act, as described in section 4.C of this report. A nominated property must be listed as an ACV if the actual current use of the property, which is not ancillary, furthers the local community's social wellbeing or social interests (which includes cultural, sporting or recreational interests) and is likely to do so in the future.
- 7.3 Plainly the use of the Property is as a post office and stores and this is not an ancillary use. The Ministerial Foreword to the "Community Right to Bid: non statutory advice note for local authorities" starts in its first sentence: "*From local pubs and village*

shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them”.

- 7.4 When making its decision, there is no requirement in the Act that the primary use of the property must be for the benefit of the local community, but that in the opinion of the local authority the actual current use of the property (which is not an ancillary use) furthers the social wellbeing or social interests of the local community.
- 7.5 The local authority must make its listing decision based on local context and all the circumstances. When considering whether a nominated asset furthers the local community’s well-being, the local authority should consider the use of the asset and the role it plays within the local community.
- 7.6 There is some variance in the respective opinions of EBCS and the Owner on the issue of extent of local custom and resulting social interaction (sections 3 and 4 respectively of the Report). However, there seems little doubt that, as the only local community shop and post office, it provides a service to the local community.
- 7.7 It is not unreasonable to think that the Property will continue to be used in a way that will further the social well-being or social interests of the local community.

8.0 REVIEW CONCLUSION

- 8.1 I am therefore satisfied that it is not unreasonable to think that the Property will further the social interests or social wellbeing of the local community as required by the Act. I therefore confirm the Council’s original decision to list the Property as an asset of community value.



A BETHUNE

**ACV Review: Mr A Bethune, Executive Head of Financial and Corporate Services
NFDC**

Date:

Appendix 1 – EBCS nomination (5 September 2021)

Appendix 2 – Report on nomination; incl EBCS’s nomination; plan of the Property; and emails from the Owner (6th and 8th October 2021) in response to the notification of the nomination

Appendix 3 - Email from Owner (22 December 2021) requesting review of the ACV listing