FREETHS

For the attention of Julia Turner
Legal Services Manager
New Forest District Council
Appletree Court
Beauliue Road
Lyndhurst
Hampshire
SO43 7PA

Direct dial: +44 (0)845 271 6764
Direct fax: +44 (0)845 077 9683
Switchboard: +44 (0)1908 668555
Email: mark.brown@freeths.co.uk

By Post and E-mail:
julia.turner@ndfc.gov.uk

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Dear Sir

HORSE AND GROOM, WOODGREEN, FORDINGBRIDGE– ACV REVIEW

As you are aware, we act for Hall & Woodhouse Limited ("**the Owner**"), the freehold owner of The Horse and Groom, Woodgreen, Fordingbridge, SP6 2AS ("**the Property**").

We write further to your letter dated 23 February 2017 informing our client of the nomination of the Property ("**the Nomination**") as an Asset of Community Value ("**ACV**") pursuant to the Community Right to Bid provisions of the Localism Act 2011, such nomination having been made by Woodgreen Parish Council ("**the Nominator**"), by way of a nomination form dated 17 February 2016 (presumably this should read "2017") ("the **Nomination Form**").

We now refer to your letter dated 4 April 2017 informing our client of New Forest District Council's ("the **Council**") decision to list the Property as an ACV on the Council's list of Assets of Community Value. On 22 May 2017, we requested a review of the decision to list the property as an ACV ("**the Review**") on behalf of the Owner. By way of comment on behalf of the Owner, we are instructed to make the following representations to the officer responsible for reviewing the Council's decision ("the **Reviewing Officer**") to list the Property as an ACV, for his / her careful consideration.

A. ACV listing

1. ACV listing of a property has severe and far-reaching consequences for the owners of nominated properties in terms of the owner's otherwise unrestricted ability to dispose of its property as it sees fit and in terms of the restriction of future development of the property. Largely because of this, a property's value may also be prejudicially affected by ACV listing. The consequences of ACV listing include:

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(a) The removal of permitted development rights for change of use to class A1 (shops), class A2 (financial and professional services), and class A3 (restaurants and cafes) for 5 years, whilst the property in question remains listed.

(b) The removal of permitted development rights for demolition of the building erected upon the property in question.

(c) The entry of a restriction on title, preventing the owner of the property in question from entering into a relevant disposal, which means a sale of the freehold or the grant of a leasehold interest for more than 25 years, in either case with vacant possession, without first having followed the moratorium procedures contained in the Act.

(d) The potential imposition of a moratorium against dealing with the property for either six weeks (the interim moratorium) or, if the Council receives notice of an intention to bid from a community interest group (as defined in the Assets of Community Value (England) Regulations 2012/2421 ("**the Regulations**")), for six months. This consequence can render the property in question substantially more illiquid for either the current or future owner, causing a proposed sale or letting of the property in question to fail.

2. Further, the listing of a property as an ACV can also have serious consequences for listing Councils, who are placed at risk of the requirement to compensate affected owners, and the Owner notes the following in this regard:

(a) Regulation 14 requires Councils to compensate owners of ACV listed land where they make a claim in respect of loss and expense that would likely not have been incurred had the Council in question not decided to list the property as an ACV.

(b) The Department for Communities and Local Government's Non-statutory Advice Note is careful to state at paragraph 10.2 that:

> *"The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for loss or expense arising simply as a result of the land being listed".*

(c) At this point it is instructive to consider how Courts at the highest level have interpreted compensation provisions in statutory schemes. Paragraph 7(1) of Schedule 4 to the Electricity Act 1989 creates a right to compensation where a wayleave is granted over a landowner's land, in the following terms:

> *"(1) Where a wayleave is granted to a licence holder under paragraph 6 above— (a) the occupier of the land; and (b) where the occupier is not also the owner of the land, the owner, may recover from the licence holder compensation in respect of the grant."*

(d) In *Arnold White Estates Ltd –v- National Grid Electricity Transmission plc* [2014] Ch. 385, the Court of Appeal interpreted that provision. Briggs LJ said as follows at [14]:

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> *"it was broadly common ground that, like other statutory provisions for compensation for the compulsory acquisition of, or of a right over, private property, compensation for the grant of a statutory wayleave is to be quantified in accordance with what has come to be known among compulsory purchase lawyers as the principle of equivalence. In its earliest and classic form, the principle is encapsulated in Horn -v- Sunderland Corpn [1941] 2 KB 26 , 40, per Scott LJ. Speaking of the Acquisition of Land (Assessment of Compensation) Act 1919, he said*:
>
> > *"The word 'compensation' almost of itself carried the corollary that the loss to the seller must be completely made up to him, on the ground that, unless he received a price that fully equalled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice.""*

3. In light of the potentially severe consequences of ACV listing on property owners and councils, it is important that the relevant local authority considers all of the circumstances in coming to the correct decision on a given nomination. If it fails to do so, the Council is placed at risk of a two-fold compensation claim: (i) the first being a possible diminution in value claim, for example, and (ii) the second being a claim for the owner's costs in reviewing the Council's decision if the owner is successful in getting the Property de-listed.

4. It is the Owner's respectful submission that in accordance with the principle of equivalence, with the plain words of the statutory provisions, and with common sense, an owner of ACV listed land must be recompensed where appropriate. Accordingly, Councils are exposed to considerable risk should land be ACV listed as a consequence of the acceptance of an ACV nomination as a community nomination where, in fact, there is no realistic prospect of a community interest group (as defined in Regulation 12) forming at any time to consider bidding for the property in question should the owner give notice of an intent to enter into a relevant disposal (as we consider to be the case here). The largest risk to the Council takes the form of a potential claim for diminution in value to the property in question as a consequence of the listing. In an appropriate case, this may run to seven figures.

5. We expressly reserve our client's right to refer to these matters in respect of any compensation claim required to be made against the Council.

B. Invalid nomination – legal framework

6. S.89(1)(a) of the Localism Act 2011 ("**the Act**") states that land may only be included in a local authority's list of ACVs in response to a *community nomination* (our emphasis). Under s.89(2)(b)(i), a community nomination (in relation to a local authority), means a nomination which nominates land in the local authority's area (s.89(2)(a) of the Act) and which is made by (inter alia) *"a parish council in respect of land in England in the parish council's area"* (s.89(2)(b)(i) of the Act).

7. Therefore a local authority's first task in assessing any nomination, before even considering the merits of a nomination, is to determine whether it is a community nomination as required by s.89(1)(a) of the Act. A nomination is a community nomination if and only if the nominating body satisfies the Council of its eligibility to nominate. A local authority must satisfy itself that

the evidence requirement, set out above, has been met. Any nomination received from a nominating body that does not satisfy the evidential burden should be rejected as not being a community nomination.

8. In order that a local authority may be satisfied that a nominating body satisfies the relevant conditions, there is a statutory requirement that a nominating body supplies evidence that the conditions are satisfied. In particular:

    - Regulation 6(a) of the Asset of Community Value (England) Regulations 2012 ("**the Regulations**") requires that a community nomination provides a "*description of the nominated land including its proposed boundaries*". The Nominator has failed to do so in response to Section B2 on the Nomination Form which states, "*Please provide information which helps to clarify the exact location and extent of the asset being nominated. This could include: Where the land is registered, the Land Registry Title information document and map with boundaries clearly marked in red... a written description with ordinance survey location, and explaining where the boundaries lien, the approximate size and location of any building/s on the land... a drawing or sketch map with boundaries clearly marked in red...*". As a result of the Nominator's failure to identify the land being nominated, the Property was listed as an ACV in its entirety, which is simply erroneous for reasons to follow in these representations.

    - Regulation 6(d) of the Regulations requires that a community nomination must include "*evidence that the Company is eligible to make a community nomination*". This is so that the Council may assess whether or not any nomination made is indeed a community nomination. If it is not, because there is no evidence provided with the nomination to show that the Company is eligible to make a community nomination, then the nomination must be an unsuccessful nomination, because it is not a community nomination, and the Property added to the Council's list of unsuccessful nominations (s.90(5) of the Act). The Nominator failed to provide any evidence of its eligibility as part of the Nomination.

9. Each of regulations 6(a) and 6(d) must be narrowly construed in the light of the serious and far-reaching consequences for the owners of ACV listed property (set out above).

10. Further, the listing of property as an ACV can also have serious consequences for listing Councils, who are placed at risk of the requirement to compensate affected owners, and the Owner relies upon the contents of paragraphs 2 and 3 above in this regard.

C. Insufficient evidence that the Property is of any Community Value

11. We are obliged to draw the wholly inadequate nature of the Nomination itself to the attention of the Council.

12. We respectfully remind the Council that the test to establish whether a validly nominated property is in fact an asset of community value is set out in s.88 of the Act and the relevant provisions of the Regulations. The relevant statutory provisions do not identify any "classes" or "types" of property that automatically pass the test for community value and the test itself

must be applied on a case-by-case basis to the facts of each and every individual nomination, without exception.

13. By extension (and in terms relevant to the current Nomination), it clearly cannot have been the intention of Parliament in drafting the relevant provisions of the Act and of the Regulations that all pubs should satisfy the test set out in s.88 by virtue of being pubs alone. The bar set by s.88 requires more than mere use of a property as a public house. Indeed in Patel v London Borough of Hackney and another *[2013] UKFTT CR/2013/0005 (GRC)* at paragraph 4 (enclosed) Judge Warren stated that *"for the appellant, Mr Turney, correctly pointed out that not all pubs would come within Section 88(2)(c)"* (it is clear that the Judge meant s.88(2)(a) or (b), given that there is no sub-section (c), and also from wider context in that case).

14. It follows that it is not sufficient, in attempting to satisfy the criteria for community value under s.88 of the Act, for a nominator simply to say of a pub that it is a pub. Pubs do not qualify by definition as assets of community value and identifying a property as a pub does not alleviate the Nominator's responsibility to establish that the property satisfies s.88 of the Act. If the Nominator cannot provide sufficient reasons (over and above the simple fact that the property is a pub) as to why a property satisfies the test under s.88 of the Act, then the nomination must be unsuccessful.

15. Turning to the test for community value itself, the relevant provisions of the Act and of the Regulations are as follows. For the Property to be land of community value, the Council must reasonably form the opinion that either:

    (a) an actual current non-ancillary use of the Property must further the social wellbeing or social interests of the local community and it is realistic to think that this can continue (s.88(1) of the Act); or

    (b) there must be a time in the recent past when an actual non-ancillary use of the Property furthered the social wellbeing or interests of the local community and it is realistic to think that there is a time in the next five years that there could be such use (s.88(2) of the Act).

16. In the absence of a statutory definition or guidance as to the meaning of *"ancillary"* within s88 of the Act, the term must be given its ordinary and natural meaning within the context of the facts of the matter under consideration (as has already been discussed). The shorter and little Oxford English Dictionaries define ancillary as meaning *"subservient*", "*subordinate*", "*auxiliary*", "*providing essential or necessary support to the primary activities or operation of an organization or system".*

17. *"Social interests"* include cultural, recreational and sporting interests (s.88(6) of the Act). *"Social wellbeing"* is not defined by the Act, but it seems that it is the wellbeing of *society* itself that is important (in the sense of the maintenance and strengthening of bonds between people, the promotion of societal cohesion and unity, etc) rather than just the wellbeing of a number of individuals within a given society. The Act focuses on communities, not individuals.

18. A community nomination must include sufficient reasons for the Council to conclude that the Property is of community value (Regulation 6(c)). Many of the unsubstantiated allegations set out in the Nomination Form are not remotely appropriate to the Council's decision-making process. They simply bear no relevance at all to the criteria set out in s.88 of the Act. In particular:

    (a) The Nomination consists of statements intended to stand as evidence of their own truth in satisfaction of the community value criteria contained in section 88 of the Localism Act 2011, despite the paucity of detail and corroborating contemporaneous documentary evidence to support the statements made.

    (b) The Nomination has ignored the preponderance of other nearby public houses which are demonstrably of community value. Further, the Nomination has ignored other nearby community facilities and their usage and availability for use by the local community.

    (c) The Nomination makes reference to irrelevant, purely ancillary or otherwise marginal activities which only serve to highlight the weakness of the argument for the Property satisfying the community value criteria.

19. We refer to the Owner's written representations dated 8 March 2017 in relation to the specific reasons the Nominator provided for satisfaction of the community value criteria. In addition, we would ask the Council to take into account the following comments:

    - Cricket club/ darts team: It plainly cannot be the case that a pub should be regarded as an asset of community value simply because it is used by a cricket clubs and darts team. In any event, the Nominator has provided no evidence that patrons of the pub play darts or cricket as alleged, or of their frequency. Without any such evidence, this is no more than a bare assertion against which the Council should draw adverse inference for want of detail or evidence in support. There is not even a hint of a suggestion that such activities occur as part and parcel of the main use of the Property for the sale of alcoholic and non-alcoholic drinks with or without food. There is no evidence of teams or leagues using the pub. In any event, Woodgreen has its own cricket club with clubhouse facilities, which we understand the cricket team to use regularly.

    - Local dining clubs: Again, the Nominator has failed to provide any evidence that local dining clubs use the Property, or of the frequency.

    - Pub quiz: This unparticularised and bare allegation fails to engage the s.88 criteria in that the mere fact that the Property might be used for entertainment purposes and by local people to meet and socialise is not sufficient to establish that the Property furthers the social wellbeing or social interests of the local community in the sense intended under the Act. Without evidence (beyond statements which beg the question made by the Nominator), and without explaining how and in what ways such entertainment encourages community cohesion and a collective sense of well-being, this allegation is simply begging the question.

- <u>Bank holiday festivals</u>: The Council needs to assess whether the Property furthers the social wellbeing or social interests of the local community, not whether an environment exists which offers live music and food. It goes without saying that merely because a property hosts/ has hosted such events in the past, it does not prima facie make the Property of community value. There must be something more. The Nominator has provided no evidence whatsoever of festivals being hosted at the Property, or of any specific or identifiable value which might be attached to them. Such evidence would be easy to provide, for example via letters of support or statements from any of the individuals that attended such events at the Property or, indeed, used the Property to perform live music. In any event such events would be ancillary to the main use of the Property as a public house, which is the sale of alcoholic and non-alcoholic beverages to the public with or without food. There is no suggestion that festivals are part of the public house operation.

- <u>Church activities</u>: The charitable fundraising efforts of the pub are not a use which of itself satisfies the community value criteria contained in the Act. In any event, this allegation relates to the mere existence of the Property as a pub and not to any actual past or current use of the Property, and accordingly the Council cannot consider it as a matter relating to the satisfaction of the community value criteria. In addition there is a church in the village and, as such, church activities are supported by the local community already within the church premises. It is not clear on the face of the Nomination which church activities the Property supports or what contribution it makes to the local community. Absent any satisfactory evidence in support of these allegations, they are no more than bare assertions which fail to engage the community value criteria and the Council should give no weight to them, drawing adverse inferences from the paucity of information provided. Satisfactory evidence would have been easy to provide in the form of flyers/ posters for such fundraising events, photographs of such events taking place, and/ or letters of support from the local causes that such events allegedly support i.e. representatives of the charities.

- <u>Only pub in the village</u>: The allegation that the Property is allegedly the last in the area, is insufficient to establish that it is actually of community value as defined by s.88 of the Act. The location of the Property is irrelevant in determining whether it satisfies the test. There are a preponderance of other nearby public houses and other community facilities, which are of genuine community value. For example, the Bat & Ball located 0.7 miles from the Property (a 3 minutes drive or 19 minute walk) provides the same/ similar facilities to the Property. It is described in CAMRA's What Pub guide as: "*A Victorian building with impressive gables, and stone window surrounds and mullions. The part wood-panelled interior is divided into three distinct areas (for drinkers, diners and games-players), and has a small display of cricketing memorabilia. The pub has fishing rights on the Avon, and offers accommodation for up to eight in a lodge. Nearby are the Elizabethan Breamore House and its Countryside Museum, the Anglo-Saxon St Mary's church and, a mile's walk north-west of these, a mizmaze. Live music and quizzes feature monthly. The pub serves a house beer 'The Bat & Ball*". It offers: (a) disabled access, (b) lunchtime and evening meals, (c) a pub garden, (d) parking, (e) accommodation, and (f) a family-friendly and dog-friendly environment.

Outside of pubs, there are also several other places within proximity to the Property where residents can meet to socialise, participate in activities/ events, and/ or host meetings. The statement made by the Nominator to the effect that the Property stands alone as a pub in the local area as a community facility, is not correct and cannot be safely relied upon by the Council. In any event, the mere existence or lack of existence of other facilities is not a relevant factor so far as the community value criteria are concerned, because they do not relate to actual or current use of the same at the Property. These comments should have no bearing on the Council's decision-making process.

Council's Report

20. We have received a copy of the Council's internal report/ recommendation titled "*Report to Colin Head*" ("the **Report**") which appears to have been sent to the decision-maker together with the relevant paperwork. The Report, essentially, appears to reflect the Council's evaluation/ assessment process in respect of the Property.

21. We consider it necessary to draw the Council's attention to the following references/ statements made in the Report. The Council states at paragraph 8 of the Report, *"Firstly a flexible approach can be taken for nominations for assets of community value and the Council can use local knowledge and draw reasonable conclusions rather than rely on specific evidence. Second it is not necessary for the Council to decide to list a Property only where there are no other facilities available".* It appears that the Council may have taken it upon itself to carry out further investigations or draw certain conclusions in order to perfect the Nomination. Both the procedure for considering a given nomination and the local authority's ultimate decision must be fair and free from bias. The Council must observe its quasi-judicial role and maintain its impartiality.

22. If the nominator could not provide sufficient reasons (over and above the simple fact that the property is a pub) as to why a property satisfies the test under s.88 of the Act, then the nomination must be unsuccessful, as in this case. Although our client acknowledges that social hubs are valuable and necessary, the Nominator has failed to establish that the Property is such a place, nor that it could reasonably be expected to become one.

23. The Nominator has supplied no evidence whatsoever in respect of the allegations that it has made. There is no evidence furnished at all by the Nominator to support an assertion that the Property, or any part of it, is of community value. It has simply made unsupported allegations and the Council has appeared to accept this position as satisfactory, which simply cannot be right. The Council concludes in the Report that "it does seem" that there is an actually use of the Property which furthers the social wellbeing or social interests of the local community, without providing any further explanation as to how the tests in the Act have been satisfied. There is a paucity of detail within the Report and we question the basis on which the Council reached its conclusion to recommend to Mr Read that the Property be listed as an ACV.

Insufficient evidence that the Property is of any Community Value – Summary

24. In summary, there is no evidence furnished by the Nominator to support an assertion that the Property, or any part of it, is of community value for the reasons stated within the nomination.

In fact some of the allegations made suggest that the Council should be very cautious in relying upon the reasons asserted, and instead draw adverse inferences from the absence of evidence provided.

D. Development of part of the Property – the Field

25. We are also obliged to draw the excessively broad scope of the Nomination to the attention of the Council, as the Nomination includes large swathes of land, which are not of community value (as defined by the Act). We are also obliged, at this juncture, to highlight the Owner's future intention to develop part of the Property.

26. The Property is a pub in the heart of the New Forest. The Nominator has included a large tract of land within the scope of the Nomination which cannot properly be considered to be part of the same "unit" for nomination purposes as the rest of the Property and which does not provide any community value whatsoever.

27. By way of explanation, the Property comprises of not only the public house building ("the **Pub**"), but also a large plot of land to the rear of the pub ("the **Field**"). Much (if not all) of this additional land fails to satisfy the community value criteria established by s.88 of the Act. Further, any community value generally attributable to the Property (if any such exists) must be specifically attributable to the Pub itself. The Field cannot plausibly be said to have (or have recently had) an actual use (ancillary or otherwise) that furthers the social interests or social wellbeing of the local community.

28. The Council is respectfully referred to the enclosed plan, which shows the Property outlined in black and the Field hatched red ("the **Plan**"). The Council will see that the Field comprises a substantial amount of the land at the Property. The Nominator has nominated the Property in its entirety and included the Field, which is essentially a large area of unused land, and the Council has decided to list the whole Property as an ACV, which is erroneous for reasons to follow later in these submissions. For the following reasons (and without prejudice to our arguments below regarding the invalidity and demerits of the Nomination), we submit that the Field should be omitted from the scope of the Nomination in any event.

29. In particular the Owner intends to obtain planning permission to convert the Field into a scheme of 9 residential units ("the **Scheme**"). We enclose a sketched drawing of the proposed Scheme/ site plan of the Property. The Council will see that the Scheme does not concern the Pub itself. The existing Pub business will not be affected by the Scheme, as it seeks to use an unused area i.e. the Field. The envisaged development and the Application does not in any way interfere with any community value that the Pub may be capable of delivering to the local community (although, it is denied that there is any community value attaching to the Property at all).

30. Therefore, the Scheme envisages that the Pub will continue to operate, with its car park and garden also remaining in situ. It is merely the Field that the Owner intends to develop for residential use. We understand that the Council is actively seeking sites within the New Forest for residential development and, so, it seems that the Owner's intentions in fact harmonise with those of the Council. An application for a change of use of the Field will be submitted in due course so that it can be developed as per the Scheme.

E. Land not of community value – the Field

31. We enclose photos of the Field. It is clear that the Field is physically separate from the remainder of the Property which is traded as a pub. The photographs show that the Field has been fenced off and is not in use with the pub. There are small areas within the Field which are used for occasional camping/ campervans (photo 1962) or for animal grazing (photo 1964). However, these areas form a very small proportion of the land at the Field and such activities do not take place on a regular basis or form part of a main use of the Property.

The Field's seperability from the Main Economic Unit

32. We respectfully refer the Council to Judge Lane's decision in C, S & D Trouth –v– Shropshire Council and another *[2015] UKFTT CR/2015/0002 (GRC) (11 June 2015)* (enclosed) which provides some useful guidance on the conceptual seperability of areas of land for the purposes of deciding whether the use of one area of land should be assessed in light of that of another because they are one unit, or whether they should be assessed independently.

33. One of the relevant factors is whether the two areas of land are part of the same *"actual land unit"* on a common-sense view (C, S & D paragraph 21). The learned judge also recognised that the division of land by planning units (although not always determinative) will inform the issue of seperability (C, S & D paragraph 22). For example, the car park and the pub garden are part of the same economic and planning unit as the Pub. On any rational view, the car park and garden are only component parts of the Property. It is therefore only sensible to assess their use in light of the use of the relevant part of the Property as a pub.

34. In C, S & D, the learned judge recognised that whether nominated land can be regarded as a *"unit"* for the purposes of determining which uses are primary or ancillary to it will be *"fact specific"*. A number of factors may inform this decision, which is to be taken on a *"common sense"* basis.

35. For example (and as discussed above), the car park is clearly part of the same economic unit as the public house, part of the same title number and part of the same planning unit. It cannot be conceptually separated from the pub itself without a stretch of the imagination. It is thus, on any common-sense view, part of the same unit comprising the pub building, the car park, and the garden ("**the Main Economic Unit**")) for the purpose of the nomination and of determining which uses of the land are relevant in assessing community value (or the lack thereof).

36. On the other hand, the Field *must* be treated as separate from the Main Economic Unit. Despite being a part of the same title number, the Field does not form part of the Main Economic Unit whatsoever. The Field is derelict. It is not open, accessible to or used by patrons of the pub and is treated entirely separately by both the Owners and members of the local community. It is easily conceptually seperable from the Main Economic Unit of the Property. On any common-sense view, the Field is seperable from the Main Economic Unit for the purposes of the Nomination and its use should have been considered by reference to itself, rather than by reference to the Main Economic Unit.

37. Should the Council disagree, the following points regarding the use of the Field apply equally, with the addition that the (non) use of the Field is also ancillary to that of the Main Economic Unit.

<u>Use of the Field</u>

38. As set out above, the Field is largely not used at all, let alone in a way that is of any benefit to the social interests or social wellbeing of the local community. A small proportion of the field has, in the past, been used for camping or animal grazing; however this was to a very limited extent. The Field fails completely to satisfy the s.88 criteria and is entirely inappropriate for listing as an asset of community value. Nor does the Nominator refer to the Field in any part of the Nomination Form or allege that it is of any community use.

<u>Physical and functional seperability</u>

39. The Field should therefore have been excluded from the scope of the Nomination in any event, and should be removed from the Council's listing. Further, and in any event, the Field has been separated from the Main Economic Unit by fencing. Therefore, the Field and the Main Economic Unit are physically and functionally separate and that should have been fatal to consideration of the Field as part of the listing process. The Council is referred to the test set out in the First Tier Tribunal case of <u>*Wellington Pub Company Limited –v- the Royal Borough of Kensington and Chelsea*</u> (copy enclosed), as to whether there is a physical and functional relationship. The cessation of the physical and functional relationship between the two areas (as a result of the fencing) is fatal to the consideration of any community value attaching to the Field. It seems that the Nomination has been made by the Nominator in ignorance of the separate parcels of land comprising the Field which exist and are part of one single property title, which separate parcels have been separated from the physical and functional relationship of the pub. The entire Property now sits on the Council's List of Assets of Community Value, which simply is not right.

<u>Exclusion of the Field from ACV listing in any event - summary</u>

40. In summary:

    (a) Our client's position regarding the community value of the Pub is entirely reserved, however it is our client's position that whatever community value may be derived from the Property must be derived from the pub itself. As above, it is our client's position that the Nomination is invalid and that the Property as a whole does not satisfy the s.88 criteria for community value.

    (b) However, should the Council disagree, it is clear that whatever community value is attributable to the Property as a whole is actually more specifically attributable to the Main Economic Unit itself and <u>not</u> the Field whatsoever. The Field does not form part of the Main Economic Unit and is, on any common-sense view, seperable from the Field, for the purpose of considering its community value.

    (c) A large portion of the Property i.e. the Field, is not of community value as defined by s.88 of the Act in that it lacks an actual, current, non-ancillary use that furthers the

social wellbeing or social interests of the local community (as required by s.88(1) of the Act), nor has there been a time in the recent past when such a use existed (as required by s.88(2) of the Act). The Field is not used as a whole, let alone in a way that is of any benefit to the social interests or social wellbeing of the local community. The Field fails completely to satisfy the s.88 criteria and is entirely inappropriate for listing as an asset of community value.

(d) The scope of the Nomination is therefore unnecessarily broad and should be limited by the Council to exclude the Field. The Council is respectfully referred to the test set out in the First Tier Tribunal case of *Wellington Pub Company Limited –v- the Royal Borough of Kensington and Chelsea* (copy enclosed) as to whether there is a physical and functional relationship. There is plainly none in this case.

(e) Given the above, and without prejudice to our arguments as to the invalidity and demerits of the Nomination, we respectfully submit that the Field should be excluded from the scope of any ACV listing in any event.

41. We also observe that the primary purpose of the ACV legislation is to give community interest groups time to bid to acquire a property, not to prevent otherwise acceptable development. This was confirmed in a planning decision which highlighted that the primary purpose of the ACV regime is categorically **not** to frustrate the development and planning application process: see the decision of the Planning Inspectorate in APP/Y5450/W/14/3001921- 12 May 2015 (concerning a planning application for permission to convert the Alexandra in Haringey, London into two 3-bedroomed dwellings). In this case, the listing of the premises as an ACV was accorded negligible weight and this resulted in the grant of planning permission. The planning Inspectorate overturned the decision of Haringey Council to refuse planning permission. We enclose a copy of the Appeal Decision.

42. As part of the decision-making process, the Planning Inspectorate considered the general community value of the pub and its impact on planning considerations and stated:

> (Paragraph 22) "*The listing of the premises as an ACV does provide a tangible demonstration that a section of the community considers that, through recreation, the pub furthered the social wellbeing or social interests of the local community. I am aware also that the Council has reviewed the listing and considers that there is a realistic chance that, as a non-ancillary use, the property could do so again within the next five years (whether or not in the same way as before). However, the Council's finding regarding re-use of building is contingent upon the current appeal being dismissed. The relevant ACV legislation sets out specific tests which are narrower than the planning considerations before me.* ***The primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development.*** *Accordingly, whilst I afford it some weight in this case it is not determinative*" (underlining added for emphasis).

43. In this instance the Nominator has not indicated at any stage that either it or any other eligible community interest group has any genuine intention to purchase the Property, or that any other person meeting the relevant criteria under the Localism Act 2011 is able to do so, or even that there is a remote hint of such a person coming into existence at any point in the

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future. Although the Council may take the view that it is not strictly necessary for a nominator to prove an intention to purchase a nominated asset in order for an ACV nomination to succeed (our client's position on this is entirely reserved), we submit that the clear absence of *any intention whatsoever* of any person or community interest group to purchase the asset nominated should have counted against the Nomination.

Conclusion

It is, therefore, the Owner's contention that no reasonable authority, addressing its mind to the correct matters to be considered and limiting itself to the absence of evidence provided, could possibly conclude that the Property is an ACV. Without prejudice to the invalidity of the Nomination in the first place, the Nomination failed to establish that the Property, or any part of it, is of community value as per s.88 of the Act. The Property may not therefore be listed as an ACV and the Council is respectfully invited to remove the Property from its list of successful nominations.

In the alternative, however, should the Council disagree, it is clear that whatever community value is attributable to the Property as a whole is actually more specifically attributable to the pub itself. A large portion of the land (i.e. the Field) is not of community value as defined by s.88 of the Act in that it lacks an actual, current, non-ancillary use that furthers the social wellbeing or social interests of the local community (as required by s.88(1) of the Act), nor has there been a time in the recent past when such a use existed (as required by s.88(2) of the Act), nor is there are time in the next five years when such a use might resume. It seems that the Nomination is an abuse engineered to prevent any future development of the Property.

More specifically, use of the Field is physically and functionally separate and that was fatal to its consideration as part of the listing process; and it is without benefit to the social interest and/or social wellbeing of the local community in their own right in any event. In light of this, we respectfully submit that the Field should be excluded from ACV listing in any event. It is clear that neither the Nominator nor any part of the local community has any intention of purchasing the Property at all, let alone the Field. Therefore, the Field should be removed from the Council's list on review.

We trust that these representations are of assistance to the Council in reaching its decision upon review.

Yours faithfully

Freeths LLP.

Freeths LLP