FIRST-TIER TRIBUNAL (GENERAL REGULATORY CHAMBER)

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID

Tribunal Reference:	CR/2013/0005
Appellant:	M Patel
Respondent:	London Borough of Hackney
Second Respondent:	Churchwell Residents' Group
Judge:	NJ Warren

DECISION NOTICE

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as "the moratorium" will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

2. In Mehetabel Road, Hackney, there was a pub named the Chesham Arms which had been there since 1866. In October 2012 Mr Patel bought it and closed it. He wants to turn it into flats. On 19 November 2012 the Churchwell Residents' Group asked the London Borough of Hackney ("Hackney") to list the pub as an asset of community value. Hackney did so and confirmed this decision on review. Mr Patel now appeals to the Tribunal against the listing.

3. I heard the appeal at Hackney Town Hall on 17 October. Mr Patel was represented by Mr Turney. Hackney were represented by Mr Lee. Mr Watson and Mr Williams spoke on behalf of the Churchwell Residents' Group.

4. The real issue between the parties is whether Section 88(2)(b) of the Localism Act is satisfied. This requires that before an asset is listed, it must be:-

> " ... realistic to think that there is a time in the next five years when there could be 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".

It is not suggested by either of the respondents that such a use could be anything but as a pub. For the appellant, Mr Turney, correctly pointed out that not all pubs would come within Section 88(2)(c). In my judgement, however, the reality is that if the building did revert to being used as a public house then, looking at this particular building in this area, that use would come within the sub-section.

5. I should perhaps deal with two preliminary points about which I heard argument from Mr Lee and Mr Turney.

6. Mr Turney submitted that the Tribunal's jurisdiction was to rehear the case completely. Mr Lee drew attention to the conditions for listing being prefaced in the statute by the words "in the local authority's opinion". He submitted that whilst the Tribunal was not limited to proceeding on the somewhat narrow grounds upon which judicial review is possible in the Administrative Court, nevertheless in approaching the appeal, the Tribunal should give significant weight to and afford a degree of deference towards the Council's decision.

7. I prefer Mr Turney's submission. This is a simple right of appeal to the First Tier Tribunal. I rather doubt whether the halfway house urged upon me by Mr Lee can intellectually coexist with the Tribunal's freedom to receive new information and its duty to remain unbiased. Of course, some statements made by a local authority will carry particular weight because of their source. An example in this appeal would be Hackney's assertion that "the area is experiencing considerable economic growth". A Tribunal rejecting such an statement from a local authority would have to clearly explain why. This, though, is merely part of the ordinary evaluation of evidence and does not relate to the jurisdiction of the Tribunal.

8. In earlier submissions it had been suggested on behalf of Mr Patel that it was essential to demonstrate on the balance of probabilities that the Chesham would reopen as a pub. At the hearing, Mr Turney resiled from that submission and in my judgement he was right to do so. 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.

9. It is convenient to deal next with a submission on behalf of the appellant in his reply concerning the weight to be given to Mr Patel's intentions. It is said that:-

> " The intentions of the appellant are clear and should indeed be the determinative factor in this appeal."

10. Whilst I have no doubt that it is reasonable to take into account Mr Patel's intentions as part of a general consideration of the circumstances, I cannot accept this assertion about the weight to be given to them.

11. If correct, it would seem to follow that that an owner need only say "I have set my face like flint against any use of community value" and listing will be avoided. This almost makes the scheme voluntary. I think it more reasonable to take into account Mr Patel's intentions as part of the whole set of circumstances. After all, they are the current owner's present intentions and the legislation requires an estimate of what will happen over the next five years.

12. At the hearing, Mr Turney advanced another submission to the effect that the Chesham Arms could never be viable as a public house. He relied on the evidence from the previous owner, Mr Webster. (See especially page 47 of the appellant's bundle). I do not accept that conclusion. Mr Webster's letter is silent on detail and indeed specifically refuses to disclose figures. Set against it:-

(a) The evidence of Mr Assi, the former tenant, is that he ran the pub paying a rent of £30,000 and was keen enough on the trade to want to buy it.

(b) There have been expressions of interest and at least one firm offer from those in the local pub trade.

(c) Mr Webster found it sufficiently profitable to move to the pub and to run it himself for three months between Mr Assi's departure and the sale to Mr Patel.

These indications, in my view, outweigh the evidence of Mr Webster.

13. Mr Turney made the fair point that the evidence of people being willing to buy the pub depended on the acceptance of a valuation much below what Mr Patel had paid and I turn now to consider that point in the context of the general prospects for the Chesham Arms.

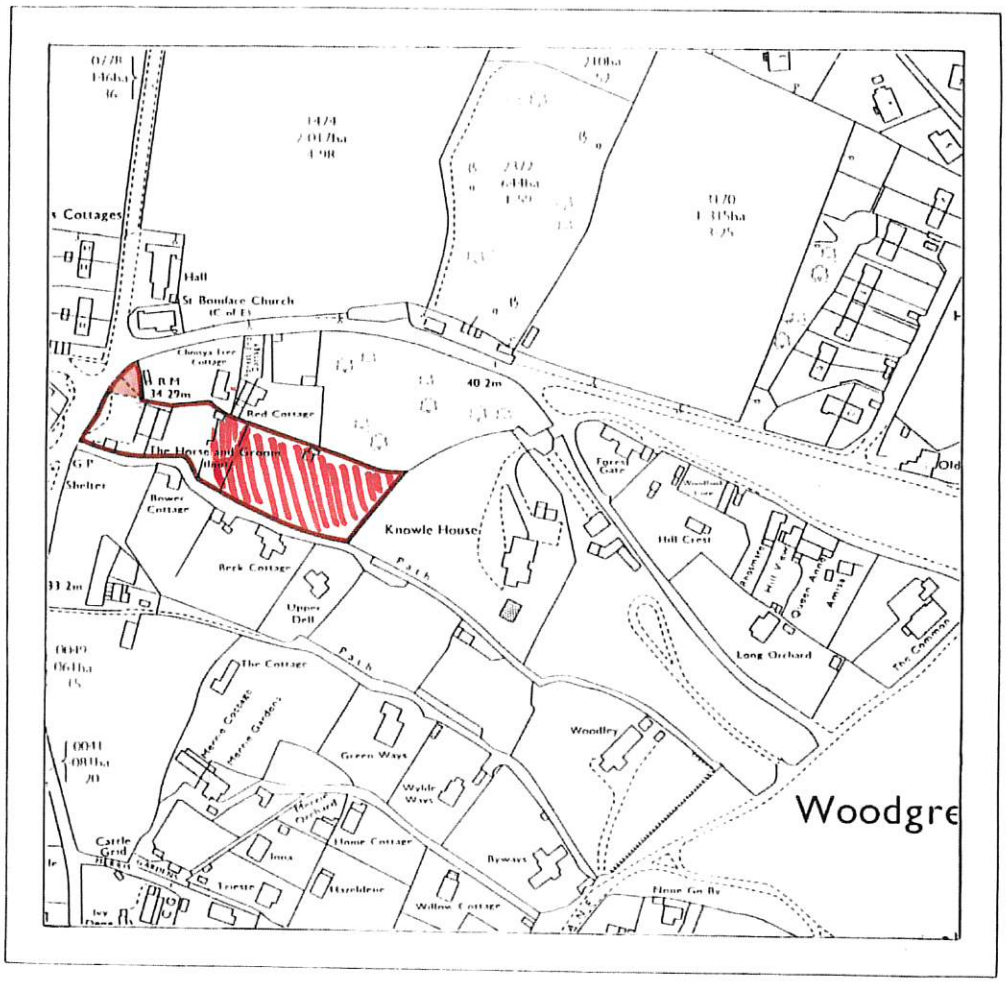
14. The current planning use for the building is as a public house. This would permit use for up to two years as an office without the need for any further permission. The building includes residential accommodation for the landlord. Mr Patel intends to rent this out. There is a suggestion, but no more than that, that the latter proposal might run into planning difficulties. Mr Patel intends to apply for planning permission to convert the entire building for residential use.

15. If such permission were granted and the building converted then its value could easily be three times its value if the use were restricted to a public house. Mr Patel has bought the Chesham at a price somewhere between those two figures hoping to make a profit if planning permission is granted.

16. On the material I have, it seems to me that I must treat both the grant and the refusal of planning permission as realistic possibilities. One realistic outcome therefore is that the Chesham will be converted into flats. What if permission is not granted? A second outcome might be that the Chesham is rented out as one flat plus office space – but the current permission for office use expires in two years time. A third outcome might be that a refusal delivers a fatal blow to Mr Patel's current investment strategy. It seems to me that he might realistically then decide to cut his losses and sell to someone interested in running the building as a pub. I agree with Hackney that all these three options are realistic. It follows that they were correct to list the Chesham as an asset of community value.

NJ Warren
Chamber President
Dated 7 November 2013

H.M. LAND REGISTRY	TITLE NUMBER	
	HP469412	
ORDNANCE SURVEY PLAN REFERENCE: SU 1717	Scale: 1/2500	
COUNTY: HAMPSHIRE — DISTRICT: NEW FOREST	©Crown Copyright	



15114 LAND AT HORSE + GROOM WOODGREEN

SKETCH SITE PLAN
MORGAN CAREY ARCHITECTS
MAY 2017

15114-SK01


1968


1969

1965

1967

1962

1964

1975


1977

1979

1971

1972

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid

Tribunal Reference:	CR/2015/0002
Appellant:	C, S, and D Trouth
Respondent:	Shropshire Council
Second Respondent:	Caynham Village Hall Committee
Judge:	Peter Lane

DECISION NOTICE

Introduction

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list, it will usually remain there for five years. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as "the moratorium", will allow the community group to come up with an alternative proposal - although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

2. Section 88 of the 2011 Act provides as follows:-

> "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 interests of the local community.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority-

(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."

3. On 17 June 2014 the second respondent nominated under the 2011 Act (i) a playing field adjacent to the former Caynham Primary School and (ii) a car park, adjacent to the same site. Both pieces of land are situated in the village of Caynham, near Ludlow, within the area of the first respondent. The playing field and car park are owned by the appellants.

4. Following the first respondent's decision to list the playing field and car park, the appellants requested a review. This was undertaken in December 2014 by Christopher Edwards, Area Commissioner (South) for the respondent. The result of the review was to maintain the playing field and car park on the statutory list. The appellants appealed that decision to the Tribunal. The parties are content for the appeal to be determined without a hearing. In the circumstances, I am satisfied that I can properly determine the issues without a hearing.

History

5. The history of the two pieces of land is, I find, essentially as follows. The playing field and the car park were both originally part of the Caynham Court Estate. The Dale family gifted the Village Hall and its plot to the community in 1966. The playing field was leased to Caynham Primary School in 1975 by Dale Turkeys Ltd, the then owners. In 1977, Dale Turkeys Ltd leased the car park to Caynham Village Hall. A development company, Brew Glen Ltd, subsequently acquired the playing field and car park. When Brew Glen went into administration in 1996, the appellants purchased the property from Brew Glen.

6. According to heads of agreement of 13 July 1976, between Dale Turkeys Ltd and Caynham Parish Room Committee, the car park lease provided that the car park was to be used "only for car parking or as a play area". A lease dated 21 May 1986 between Brew Glen Ltd and Shropshire County Council, concerning the playing field, provided for the playing field to be used "for purposes connected with the Caynham Church of England (Aided) School or as a playground for use by the Children of the Village in and out of school hours and during school holidays and for no other purpose". Subsequent leases of the playing field had the effect of continuing that use. The playing field is not, however, any longer subject to a lease, given that in 2011 the school was relocated to Ashford Carbonel and the school buildings at Caynham were closed. The car park is also no longer the subject of a lease to (what is now) the Village Hall Committee.

7. Applications for planning permission by the appellants to develop the playing field for housing have been refused by the first respondent. An appeal against the refusal of application 13/03834/OUT was dismissed by the planning inspectorate on 11 February 2015.

8. The current stated intention of the appellants is to continue to press for planning permission in respect of the playing field. The same is true of the car park. Both the playing field and the car park have been respectively fenced and boarded off to prevent any use being made of them by third parties. Mr C Trouth, in his witness statement of 1 April 2015, says that:-

> "5. As to the future use of the Playing Fields, I can confirm that we have made planning applications to develop the land which so far have been refused. However, our intention is to continue to develop the land in the future. We have been made aware of new schemes by the Government to boost land supply for housing and we continue to explore all of those future possibilities and development opportunities.
>
> 6. Our intention is not to leave the Playing Fields for the next five years for the use of the community. The Playing Fields are now overgrown and the main access through the Car Park is boarded off.

So far as the car park is concerned, Mr Trouth says:-

> "... an intention is definitely in the next five years to develop the land in a similar way as the Playing Fields. Not all potential development opportunities have been exhausted. There seems to be plenty of opportunities to develop the land and our intention is to do so. There is no intention to take the boarding down and allow the Car Park to be used by the local community in the foreseeable future or at least in the next five years".

9. The second respondent states that there have been three offers made by the appellants to the Village Hall Committee to lease them the car park, in return for

the Parish Council removing its objection to the development of the playing field: in June 2012, when the original application for six houses was submitted; on 2 November 2013, when the revised application for 4 houses was produced; and most recently in May 2014, when the latest application was considered by the first respondent's planning committee.

Discussion

(a) The playing field

10. In reaching a decision in this appeal, I have had regard to all the written materials and submissions, including that not specifically mentioned in this decision. So far as the playing field is concerned, I find as a fact that the requirement of section 88(2)(a) of the 2011 Act is satisfied. Plainly, there was a time in the recent past when an actual use of the playing field, that was not ancillary, furthered the social wellbeing or interests of the local community. For many years, the lease has made it plain that use of the playing field was permitted for local children, quite apart from use of the playing field for the purposes of school recreation. The appellants have put forward no evidence to show that there was, in reality, no use made by local children or that use by local children was, on the facts, merely ancillary. The terms of the lease permitted such use both inside and outside school hours, with the result that, in terms of time at least, local use would far outweigh school use. Furthermore and in any event, significant use has been made of the playing field, with permission, as a result of the holding of village fetes, up to 2011.

11. So far as future use is concerned, I have had full regard to the stated intentions of the appellants, which are to continue to pursue their aim of development and to exclude the community from the playing field. The case for the appellants is that "it is more realistic to think" that the playing field will not be used for relevant social purposes in the next five years. As the first respondent's response points out, however, (paragraph 16) this is not the correct legal approach. As has been made plain in a number of decisions, the answer to the question of what is "realistic" may admit of a number of possibilities. In order to be "realistic", one possibility does not need to be more likely than all of the others. A possibility will not be "realistic" if it is merely fanciful.

12. The issue, therefore, is whether it can be said, looking at the present position, that future relevant community use of the playing field is merely fanciful or, in other words, unrealistic. I do not consider that the appellants have shown this to be the case. Their planning application to redevelop the playing field has been dismissed on appeal as recently as February 2015. The fact that, in Mr C Trouth's words, the appellants "continue to explore all ... future possibilities and development opportunities" does not mean in any sense that, looking at the next five years, I should assume that the only realistic outcome is that the appellants

will succeed in their planning objectives regarding the playing field. The terms of the inspector's report certainly give no such indication.

13. I have, of course, had full regard to the stated intentions of the appellants regarding community use. However, as has been pointed out, such a stated intention cannot be determinative of the question to be answered in section 88(2)(b) of the 2011 Act; since, otherwise, listing would be possible, in effect, only with the consent of the landowner. One possibility, which cannot be dismissed as unrealistic in the current circumstances, is that the appellants conclude that redevelopment of the playing field is not going to occur within any commercially viable timescale. In such circumstances, a sale of the site would be a distinct possibility. Another realistic scenario is that the appellants decide to permit relevant community use, without giving up on their long-term development plans. In this regard, I note what the planning inspector had to say about the present condition of the overgrown playing field being "likely to provide a habitat to numerous birds and animals". Bringing the playing field back into social recreational use may well eliminate this particular potential obstacle to ultimate redevelopment.

14. For these reasons, the playing field meets the requirements of section 88 of the 2011 Act.

(b) The car park

15. I turn to the car park. It is common ground that the relevant use of this land is as a car park. The appellants contend that the "primary use of the car park is use for parking cars". Up until the time when the car park was boarded off by the appellants, it is also common ground that the car park provided parking for those attending activities in the Village Hall. Those events included meetings of the Women's Institute, Gardening Society, Shropshire Village Hall Quiz, Yoga classes, Book Exchange, Children's Film Shows, other social gatherings and civic functions. Recommending refusal of outline planning permission for development of the car park, the first respondent's development manager found that the car park "has served a useful purpose providing unrestricted off road parking for the school and the village hall. The car park has been closed and objections have been made to the loss of this facility".

16. The case for the appellants is that the use of the car park was "ancillary" for the purposes of section 8 to the use of the village hall and, accordingly, the requirements of section 88 cannot be satisfied. The first respondent's position as to the car park is "more neutral", according to its response of February 2015. The first respondent submits that the car park "is an essential parking facility for those attending the village hall. In providing that parking facility, this land furthers the social well being and interests of the local community". The first respondent's analysis is that the car park "has only one use. That use furthers the

social wellbeing and interests of the local community because it allows people to attend the village hall". The response continues:-

> "26. It is a matter for the Tribunal whether or not that analysis was correct. If the Tribunal considers that whereas the Car Park has only one use, that sole use was 'ancillary' for section 88 purposes (in that it furthered activities taking place on another piece of land) then the Council will accept that decision. Indeed, the Council would benefit from the Tribunal's guidance either way on what is not a 'clear cut' question in this context (to use the language from the review decision)."

17. The second respondent notes guidance contained in the Government's "planning portal" which states:-

> "Where land is or buildings are being used for different uses which fall into more than one class, then overall use of the land or buildings is regarded as a mixed use, which will normally be sui generis. The exception to this is where there is a primary overall use of the site, to which the other uses are ancillary. For example, in a factory with an office and a staff canteen, the office and staff canteen would normally be regarded as ancillary to the factory." (http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-is-development/ Paragraph: 010 Reference ID:13-0102-0140306)

18. The second respondent cites the Royal Town Planning Institute as saying:-

> "Ancillary uses are smaller/secondary use that takes place within premises classified by their main use. A popular ancillary use is the café/restaurant element of a garden centre."
>
> (www.rtpi.org.uk/media/5511/Response-2-sent-1.pdf 'How change of use is handled in the planning system')

19. Relying on these statements and examples, the second respondent contends that the argument for the appellants on this issue "would only be correct if the Car Park formed part of the premises of the Village Hall. It does not (and if it did there would be less need for it to be listed on the Asset Register)".

20. It is plain from the passages cited by the second respondent that, in planning law, one takes a particular planning unit (referred to as a "site" and "premises" in the examples) and then examines the uses to which that unit is put, in order to see whether one such use is ancillary to another.

21. Since section 88 refers in general terms to "a building or other land", it would be theoretically possible for nominators (in the RTPI's example) to nominate merely the land within the garden centre that is being used for a café or

restaurant, on the basis that the café or restaurant is used by local persons and thus furthers relevant social wellbeing or social interests. There are plainly problems with such a scenario; and I do not consider Parliament envisaged that it would lead to the café or restaurant being listed as an asset of community value. Accordingly, in such a situation, it might be said to be open to the listing authority to refuse to treat the nomination as relating to anything other than the land comprising the entirety of the garden centre, to which the café or restaurant would plainly be ancillary. Alternatively, in order to preclude the 2011 Act being used in a way which I consider Parliament plainly did not intend, one could treat the references in section 88(1) and (2) to ancillary use as extending beyond the confines of the nominated land to the actual land unit - in this case, the garden centre - of which the café or restaurant is, on any rational view, merely a component part.

22. Both approaches achieve the same result; but I consider the second approach is preferable. It avoids "threshold" questions about what land may be the subject of a "community nomination" (section 89). The issue of whether the land alighted upon by the nominators is to be treated as a unit in its own right, within which the categorisation of uses as primary or ancillary falls to be determined, will be a question of fact and degree. Although the concept of the "planning unit" will often provide a useful guide to answering this question, I do not consider that it is necessary or desirable to make that concept the sole, automatic touchstone. Each case will be fact-specific.

23. In the present case, the history of the land comprising the car park, as set out above, and of the village hall, is such that I find as a fact the car park falls to be regarded as its own land unit for the purposes of the 2011 Act. Although the car park has a close geographic and functional connection with the village hall, I do not consider that this connection is such as to compel the conclusion that the land unit is the village hall and the car park. The history of different ownerships (originating almost 50 years ago) and of different objectives of the different owners means that it is not appropriate to treat the car park in that way. Accordingly, for the purposes of the 2011 Act, I find that the car park has its own main use (as the appellants state); namely, land for the parking of cars. There is no ancillary use.

24. It is plain on the facts that the car park satisfies the requirement of section 88(2)(a). The issue is whether it is realistic to think there is a time in the next five years when there could be a return to the use of the car park, as a car park. I find that it is realistic so to think. Again, I have had full regard to the stated intentions of the appellants. The planning position regarding the car park is, however, currently such that it cannot be said that redevelopment is the only realistic scenario within the next five years. I also have regard to the evidence concerning offers (albeit hitherto rejected) by the appellants to the Parish Council to return the car park to its previous use. That use, I find, furthered the social wellbeing and social interests by providing convenient means of access (particularly for

those with mobility issues) to the wide range of social activities taking place in the village hall. It is realistic to think that that use may resume within the statutory timescale, either because the appellants conclude that redevelopment within a commercially viable timeframe is unlikely to be achieved, and so decide to dispose of the land, or because they decide that there is utility in letting car parking resume, whilst they continue to press for planning permission.

Decision

25. This appeal is dismissed.

Peter Lane

Chamber President

Dated 11 June 2015

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid

Tribunal Reference:	CR/2015/0007
Appellant:	Wellington Pub Company
Respondent:	The Royal Borough of Kensington and Chelsea
Second Respondent:	The Norland Conservation Society
Judge:	Peter Lane

DECISION NOTICE

Introduction

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as "the moratorium", will allow the community group to come up with an alternative proposal - although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

2. The Academy, 57 Princedale Road, London W11, is a public house, previously known as the Crown, which was built in 1851. 57 Princedale Road comprises a basement, ground floor and two upper stories. The ground floor is the pub, with the basement serving as storage for the pub. The first and second floors comprise residential accommodation.

3. On 8 January 2015 the Council was asked to review its decision to list the Academy as an asset of community value under the provisions of the 2011 Act.

The listing extended to the entirety of 57 Princedale Road; that is to say, the basement, ground floor, first and second floors. The outcome of the review, recorded in the Council's letter of 2 March 2015, was to maintain the listing of the entire premises.

4. The appellant appealed to the First-tier Tribunal. The hearing of the appeal took place at Field House on 30 September 2015, when Mr Gregory Jones QC appeared for the appellant; Mr Richard Turney of counsel appeared for the Council; and Mr Scott Stemp of counsel appeared for the second respondent. I heard oral evidence from Mr Darko Luger and Mr James Preece. I have taken account of all the evidence and submissions, in reaching my decision.

Legislation and advice

5. Section 88 of the 2011 Act provides as follows:-

> "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 interests of the local community.
> (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority-
> (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."
> (3) The appropriate authority may by regulations –
> (a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular)—

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—

(i) any of the land or other land, or

(ii)any of the matters within paragraphs (a) to (d);

(f)any price, or value for any purpose, of any of the land or other land.

(6) In this section—

"legislation" means—

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

"social interests" includes (in particular) each of the following—

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

"statutory provision" means a provision of—

(a) legislation, or

(b) an instrument made under legislation."

6. Section 108 includes the following definitions:-

""building" includes part of a building;

...

"land" includes—

(a) part of a building,

...."

7. The Assets of Community Value (England) Regulations 2012 make further detailed provision in relation to relevant provisions of the Act, as regards England. Regulation 3 provides that:-

> " 3. A building or other land within the description specified within Schedule 1 is not land of community value (and therefore may not be listed)".

8. Schedule 1 describes types of land which are not of community value and therefore may not be listed. Paragraph 1 provides:-

> " 1. - (1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence.
>
> (2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if—
>
> (a) the land, and the residence, are owned by a single owner; and
>
> (b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.
>
> (3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road, railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.
>
> (4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.
>
> (5) Land which falls within sub-paragraph (1) may be listed if—
>
> (a) the residence is a building that is only partly used as a residence; and
>
> (b) but for that residential use of the building, the land would be eligible for listing."

9. Paragraph 2 of Schedule 1 states that:-

> "(a) "residence" means a building used or partly used as a residence ..."

10. In October 2012 the Department for Communities and Local Government published a non-statutory advice note for local authorities concerning the community right to bid provisions of the Localism Act 2011 and its related Regulations. Section 3 of this advice concerns the list of assets of community value. Paragraphs 3.5 to 3.8 describe land which may, and may not, be listed as such an asset. Paragraphs 3.6 and 3.7 are relevant for our purposes:-

> "3.6 There are some categories of assets that are excluded from listing. The principal one is residential property. This includes

gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Details of this are set out in paragraphs 1 and 2 of Schedule 1 to the Regulations. "The same ownership" includes ownership by different trusts of land settled by the same settlor as well as literally the same individual owner.

3.7 There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat."

The issue

11. The appellant's position is that, whilst it has no objection to the ground floor and basement of 57 Princedale Road being listed as an asset of community value, it objects to the inclusion in the listing of the first and second floors, comprising the residential accommodation. Since a residence is excluded from the category of land that can be listed, the appellant contends that, having regard to the fact that a "building" includes "part of a building", the "exception to the exception" in paragraph 1(5) of Schedule 1 is not satisfied. In the circumstances of the present case, the residential accommodation is not "integral" to that part of 57 Princedale Road which comprises the pub known as the Academy.

12. The appellant submits that it is significant for the purposes of the present appeal that, in July 2011, the Council's development control officer stated in writing that 57 Princedale Road was in use at basement and ground floor level as a public house, within Class A4 (drinking establishments) use, with basement storage and the ground floor level used for trading. The first and second floor levels were described as "residential use within Class C3 (dwelling houses) access via an external entrance to the rear".

Evidence

13. Mr Luger signed two witness statements dated 23 April and 2 September 2015. He describes that he and his wife, Marta, are the lessees and licensees of the Academy pub and that they have leased and operated the Academy for the past 27 years. During that time they have lived with their family in the residential flat on the first and second floors. The lease granted to Mr and Mrs Luger covered the entirety of the premises (that is to say, both the pub and the residential accommodation). They pay rent in respect of the entirety of the demised property. The residential element is charged at a VAT exempt rate. He and his wife are the sole directors of Academy Bars Ltd. Provision of the residential accommodation is treated for tax purposes as a benefit in kind and is so recorded in the company's tax returns.

14. When Mr and Mrs Luger came to 57 Princedale Road, the only means of access to the residential accommodation on the first and second floors was through the pub on the ground floor. In order to ensure privacy and security for them and their family, about 18 years ago Mr Luger had constructed a direct outdoor access, which has been used as the main access to the residential flat ever since. The internal connection between flat and pub has, however, been maintained. Mr Luger uses this as a matter of convenience when entering the pub on business. Mr Luger's activities in the pub do not include serving behind the bar. He and his wife employ a manager, who oversees the running of the business, including the hiring of bar staff. Neither the manager nor any of the staff lives in the residential accommodation. Mr Luger used to be present in the pub on a regular basis until mid 1990 but his attendance now is for "management meetings to attend to business needs and issues I have to address as the owner, or for a meal and to have a drink with regular customers".

15. Mr and Mrs Luger are the licensees. Mr Luger is the designated premises supervisor for the purposes of the licensing legislation. There can only be one such supervisor for each set of licensed premises. It had been Mr Luger's intention to have his manager assume that function but this has not occurred. The designated premises supervisor is the first point of contact with relevant authorities, in relation to issues arising at the premises. Mr Luger did not, however, think that a designated premises supervisor was required to live on the licensed premises, or above them.

16. Mr Luger said that there was "a certain practicality" in maintaining the internal connection between the flat and the pub.

17. Mr Luger stated that the lease of the premises had come to an end but that he had a short separate lease on the residential premises. He had also agreed an extension on the lease of the pub, but with a different notice period. The pub had unfortunately been losing money for the past three years. There were not enough regular drinking customers, owing to demographic changes in the neighbourhood, which had become more affluent, with a corresponding decline in bedsit and other cheaper accommodation. The business had increasingly come to rely on the sale of food.

18. Mr Luger stated that the utility bills for the commercial and residential elements of the premises, such as electricity, gas, water and telephone, were all on one shared account under the name "The Academy". There was also one gas, electricity and water meter for the entire premises. The Academy was reimbursed by Mr and Mrs Luger for an agreed proportion of utilities costs.

19. Mr Preece is a planning policy officer with the Council. His duties include making decisions in respect of lists of assets of community value held by the Council. He paid a site visit to 57 Princedale Road and spoke to Mr and Mrs Luger. During the visit, Mr Preece gained access via the internal doorway to the public house to the flat above, which he considered confirmed the continuing

physical relationship between flat and pub. Mr Preece believes the written view expressed in July 2011 concerning use classes of the premises is incorrect. In his view, the "entire building should be regarded as a single planning unit consisting of the public house and ancillary residential accommodation". The same was true of further reports issued in respect of article 4 directions in 2014. The officers involved in those reports did not undertake a site visit. The latest delegated decision report confirming an article 4 direction in respect of the Academy, dated 23 April 2015, stated that the suggestion the upper floors were in C3 use was incorrect and that the entire property is in use as a public house (class A4).

20. Mr Preece said that, although the licensing position played a part in his decision regarding listing of the Academy as an asset of community value, he was not an expert in licensing law. He did not know if it was a requirement for a designated premises supervisor to reside on the premises. The Council's previous stance, that the residential accommodation had been a separate planning unit, had been an informal view. Mr Preece accepted that the officer who had formed that view had based it on a site visit. The fact that the residential accommodation was viewed as C3 use meant, Mr Preece admitted, it was thereby regarded as a separate planning unit. The issue of planning units was relevant in determining the issue of an article 4 direction.

21. There were also before me statements from individuals connected with the second respondent. Photographic evidence from the 1980s showed signage advertising the pub (then the Crown) attached to the first and second floor exterior. The thrust of this evidence (not disputed by the appellant) is that that there has, since the 19th century, been use made of the residential accommodation by persons working in the pub below in a serving or "hands on" capacity. Mr Jones QC's submission is, however, that that type of activity had ceased with the changes made by Mr Luger and that this meant the residential accommodation could not be included in the listing.

Discussion

22. As has been pointed out in other cases, the concept of the "planning unit" is not determinative of questions arising under the 2011 Act and the Regulations. That is not to say the concept can never be of any relevance in answering those questions. What matters is whether the particular factors underlying the identification of a planning unit have practical utility in answering the questions posed by the community right to bid scheme.

23. Adopting this approach, I do not consider that any material assistance can be derived from the decision of the deputy High Court judge in Henriks v Secretary of State for the Environment and Eastbourne Borough Council (59 P&CR 443). In that case, it was held, on the facts, that each part of a single building, having identifiable component parts as, respectively, stabling and dog kennels, could as a matter law be treated as a separate building, as regards each of those parts, for

the purposes of the General Development Order 1977. If one were to apply to the 2011 Act the principle that the mere existence of component parts within a building means that each such part has to be treated as a "part of a building" within the meaning of section 108(1), then any residential flat above a pub would be a "building" (and therefore land) in its own right for the purposes of paragraph 1(5) of Schedule 1, with the result that the purpose of paragraph 1(5) would effectively be subverted.

24. Conversely, Mr Stemp, in his submissions, in my view went too far in contending that a residential flat within a building can never be regarded, for the purposes of the 2011 Act, as a separate building. To take the example of the Barbican Estate in London, each of its three tall towers may, at least in one sense, properly be regarded as a building. It would, however, be perverse if the presence on the ground floor of one of those towers of a pub or community shop were to lead to the listing of the entire tower as an asset of community value, including its scores of residential flats.

25. The correct answer is that the question of what constitutes a building for the purposes of paragraph 1 of Schedule 1 is one of fact and degree.

26. Mr Jones QC submitted that, even if the residential accommodation at 57 Princedale Road was not a separate planning unit from the pub, the requirements of paragraph 1(5) were still not met because the residential accommodation was not "integral", as demanded by the advice note. In his closing submissions, he said that, in order to be "integral", the residential accommodation had to be "necessary" for the community asset to function. In the present case, that was plainly not so. Mr Luger did not need to live above the pub in order for it to function as a drinking and eating establishment.

27. I consider that Mr Jones QC's submissions, if accepted, would, again, rob paragraph 1(5) of much of its purpose. It is difficult to conceive of any pub where it is "necessary" for the landlord or staff to live above it. By the same token, many buildings can be cleaned, maintained and kept secure by staff who do not need to live on the premises.

28. Accordingly, quite apart from the fact that the advice is, of course, not statutory, I do not consider that the word "integral" in paragraph 3.7 falls to be read in the way the appellant contends. Rather, the question of what constitutes the "building" which is to be the focus of paragraph 1(5) is to be determined by deciding, on all the relevant facts, whether there is a sufficient physical and functional relationship between the "residence" and the remainder of the premises which are the subject of listing.

(a) Physical relationship

29. The physical relationship between the residential accommodation and the pub is, and always has been, the same in one sense; namely that the

accommodation sits immediately above the two levels used for the pub business, with nothing else above that. The physical connection between the residence and the business has changed, to the extent that for the past 18 years or so access to the residential accommodation has been possible without having to go through the pub. I take due account of that fact. However, importantly, I also take account of the fact that the access has been maintained by the Lugers and continues to be used by Mr Luger, in particular, for accessing the pub for the purpose of carrying out business activities connected with the pub.

30. In making a finding on this issue, I have had regard to the fact that the Council has previously expressed the view that the residential accommodation fell within a different use class, for planning purposes, than did the ground and basement floors. In all the circumstances, however, I do not regard that fact as having any significant bearing on the issue of physical relationship.

31. On the evidence, I find that there is currently a sufficient physical relationship between the residential premises and the ground and basement floors of 57 Princedale Road, such that it was correct for the Council to treat the relevant building, for the purposes of the listing nomination, as comprising the entire premises of 57 Princedale Road; provided that there was also a sufficient functional relationship.

(b) Functional relationship

32. In the present case, the evidence demonstrates that it is more likely than not that the premises were constructed as a pub, with accommodation above for those engaged in running the business. During the second half of the 19th century and for most of the 20th, this was the functional relationship between the residential accommodation and the pub business.

33. The question of whether there currently exists a sufficient functional relationship between the residential accommodation and the pub needs to be viewed against that historical background. It is also relevant that Mr or Mrs Luger have not done anything which would impede any future occupier of the residential accommodation from again carrying out all aspects of the pub business, including service behind the bar, which went on in the past.

34. Considering the totality of the evidence, I find that the requisite functional relationship between the residential accommodation and the pub currently exists, despite the use made of a non-resident manager and staff. My reasons are as follows.

35. Until very recently, the lease of 57 Princedale Road covered the entirety of that building. The rental element in respect of the residential accommodation has been treated as a benefit in kind. The arrangements in respect of utilities continue to relate to the entirety of the premises.

36. Mr and Mrs Luger are the licensees of the licensed premises. Mr Luger is the designated premises supervisor for the purposes of the licensing regime, making him the point of contact in respect of emergencies. Whether or not a designated premises supervisor is legally required to live on the licensed premises, it is plainly convenient for the exercise of that role if he or she does so. Mr and Mrs Luger live in the residential accommodation, which has historically been used in connection with the pub. Mr Luger uses the internal form of communication between the residential accommodation and the pub in order to transact business relating to the pub.

37. As I have already said (paragraph 23 above), the fact that Mr Luger might be able to run the pub business, whilst living somewhere else, does not mean that the required functional connection cannot exist. Were the position to be otherwise, paragraph 1(5) of Schedule 1 to the Regulations would lose much of its utility.

38. As with the issue of physical relationship, in making my findings regarding the functional relationship, I have had regard to the Council's previous stance on use classes. On its face, the stance is indicative of there having been some change in that relationship during the more recent period of the Lugers' occupation of the premises. But the factors weighing in favour of the opposite conclusion are, I consider, far weightier. It would be quite wrong to ignore these factors, arising directly from the detailed evidence put before the Tribunal in the present proceedings.

39. I have borne in mind that paragraph 1(5) is, as Mr Jones QC pointed out, in the nature of an exception to the general exception in paragraph 1(1) that precludes a residence from being listed as an asset of community value. Insofar as the submission suggests that caution must be exercised in interpreting paragraph 1(5), I agree. As I have explained, however, the submission, if accepted in full, would go far beyond caution. The requirement that there be a current physical and functional relationship, of the kind present in this case, will ensure that the exception in paragraph 1(1) remains important.

Decision

40. The consequence of my conclusion that, on the facts, there is a sufficient physical and a functional relationship between the residential accommodation and the pub at 57 Princedale Road is that the Council was correct to treat the whole of those premises as comprising a building for the purposes of paragraph 1(5), which is only partly used as a residence. But for that residential use, the land in question would be eligible for listing as an asset of community value.

41. This means it is unnecessary to decide whether the listing of 57 Princedale Road could be amended, so as to relate only to the ground and basement floors of the building. This is not, however, to be taken as disapproving any stance which the Tribunal may previously have taken on this issue.

42. This appeal is dismissed.

Peter Lane

Chamber President

Dated 2 November 2015

The Planning Inspectorate

Appeal Decision

Site visit made on 12 May 2015

by Nicholas Taylor BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 July 2015

Appeal Ref: APP/Y5420/W/14/3001921
The Alexandra, 98 Fortis Green, London N2 9EY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by CLTX Ltd against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2014/1543, dated 30 May 2014, was refused by notice dated 19 December 2014.
- The development proposed is the conversion of Public House with ancillary accommodation above to provide 2 no. 3 bed single family dwellings.

Decision

1. The appeal is allowed and planning permission is granted for conversion of Public House with ancillary accommodation above to provide 2 no. 3 bed single family dwellings at The Alexandra, 98 Fortis Green, London N2 9EY in accordance with the terms of the application, Ref HGY/2014/1543, dated 30 May 2014, subject to the conditions set out in the schedule attached to this decision.

Application for costs

2. An application for costs was made by CLTX Ltd against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

Main Issue

3. The Council gave one, heritage-related reason for refusal. However, there is considerable third party interest, which ranges beyond heritage to more general planning considerations. Therefore, I consider that there are two main issues in this case:

   - the effect of the proposal on the public house as an undesignated heritage asset and whether the character or appearance of the Fortis Green Conservation Area would be preserved or enhanced; and

   - whether the proposal would be acceptable having regard to policies concerning community facilities.

Reasons

Heritage

4. The appeal premises are a small, detached former public house with a flat above, within the conservation area, on Fortis Green, a fairly busy road with a mixture of commercial and residential uses. It is necessary, firstly, to assess the significance of the building itself, and then the conservation area, as heritage assets, before going on to assess the impact of the proposal.

5. The building is not formally listed, either at national or local level. However, the Council considers that it has heritage significance. The appellant's Heritage Statement (HS) identifies that the building is based upon a pair of 19th Century cottages which were extensively remodelled and enlarged in 1926, to create the present building. There is little surviving internal or external evidence of those 19th Century origins. The HS finds that the building has limited evidential or aesthetic value, being an interesting example of 'domestic' pub architecture of its time. That is a view with which the Council concurs, although it argues that its value is ingrained in its evolution and adaptation, rather than its visual quality. I can find little evidence, including from my own site visit, that the building possesses (or did possess, before internal fittings and decorations were recently removed) any more than limited aesthetic value, although, externally, it exhibits a quirky architectural style which adds to the variety and colour of the street scene.

6. Where the Council radically departs from the HS is in its assessment of the building's historic and communal value. The HS states that the building has some historical value, based on evidence that beer has been sold on the site for at least 140 years; up until the start of the 20th Century probably from the front rooms of the cottages. The Council argues that the pub's intrinsic place in the historic development of the conservation area merits much greater weight, but to my mind the limited documentary evidence from the last two centuries does not suggest any greater than low to moderate, purely local, historic value.

7. The HS also acknowledges that the building has some communal value arising from its traditional role in the community and, in particular, its association with Ray and Dave Davies of The Kinks, who grew up in the area. The Council ascribes this communal value to the 'collective memory' associated with the pub use. It cites English Heritage (EH) guidance[1] that social value is associated with places that people perceive as a source of identity, distinctiveness, social interaction and coherence, which may be comparatively modest, acquiring communal significance through the passage of time as a result of a collective memory of stories linked to them.

8. I acknowledge the strength of feeling among former patrons of the pub and some in the local community, expressed through numerous individual representations and a petition with a large number of signatories. The nomination of the pub by the Save the Alexandra Action Committee as an Asset of Community Value (ACV) and its placement on the Council's list of ACV[2] provides evidence of that feeling. Many of the representations before me, including some from further afield, are prompted in no small degree by the

[1] *Conservation Principles Policies and Guidance*, English Heritage, 2008 (NB now published by Historic England)
[2] Pursuant to Section 90 of the Localism Act 1990

pub's association with the Davies brothers. Indeed, there is mention of tourists making specific trips to the pub because of that connection. However, whilst The Kinks' musical reputation endures, I have not been given any evidence that the building or its use had a particularly crucial or singular role in nurturing the band or its music. Consequently, I am not persuaded that its 'associative value', as EH calls it, is very strong.

9. I have read many accounts of how the Alexandra was a very traditional, inclusive, no frills pub with a great atmosphere. I understand the affection for that type of establishment and appreciate that such places are becoming less common. However, there did not appear to be any great historic or aesthetic merit to the internal arrangement, fittings or furniture of the pub. Even taking into account the ACV listing, there is a lack of strong heritage-related evidence and I am wary of attaching significant heritage weight to a particular business model. Nor is it clear that the pub's former character is so rare as to amount to a strong special interest.

10. Moreover, it is clear from a substantial number of representations that not all local residents valued the pub in the same way or regarded it as a benign presence in the locality. I am not convinced that the evident emotional attachment to the pub is indicative of a very strong source of identity, distinctiveness or coherence shared by a wide cross-section of the community. Although there is evidence of communal value through recent collective memory, prompted by the current proposal, I have been given no strong evidence that it was documented or otherwise consciously thrived before that. Overall, therefore, mindful that the building itself has not received, or as far as I have been made aware put forward for, any formal heritage designation, I consider that its significance as a heritage asset is limited and of a very local nature.

11. There is no appraisal document for the conservation area and I have been given limited evidence regarding its significance as a heritage asset. The HS, the Council and third parties describe it as having grown from a small hamlet, through the Victorian period and now comprising several residential streets and the main thoroughfare of Fortis Green. The latter is primarily residential, with Victorian dwellings and some later apartment blocks, but also has a small cluster of varied commercial uses forming a neighbourhood hub.

12. The juxtaposition of generally small to medium scale commercial uses and varied dwellings within this part of Fortis Green, contributes to the character and appearance, and hence, in the historical context, the significance, of the conservation area. However, an inherent aspect of the character of such areas, particularly within a major city, is the evolution of business uses over time. In my view, change and evolution, rather than stagnation, often contributes considerably to vitality and vibrancy. In any case, I am not convinced that vitality and vibrancy is the defining, or even a major, characteristic of the conservation area.

13. There is some merit in the Council's argument that the historic and communal significance of the appeal property, as a pub, adds to the vitality and vibrancy of the area, creating a pleasant contrast with the more subdued residential streets. However, the Council acknowledges that this is a subjective view and, evidently, not all local people viewed the Alexandra as making a positive contribution to the character of the conservation area. Indeed, in the Council's

committee report, its planning officers considered that the pub's contribution to vibrancy was limited. As I have found that the heritage significance of the appeal property is limited, so too its contribution to the overall significance of the conservation area as a designated heritage asset is very modest.

14. Turning to the impact that the appeal proposal would have on the building and the conservation area as heritage assets, I consider that the limited proposed external alterations would preserve and, arguably, enhance the important design elements contributing to the aesthetic value of the building and conservation area. Whilst it is argued that there would be loss of historical value from the change of use, it would be offset by reverting to the original residential use of the site. Given that the historical value is limited in any case, the development would be part of the evolution of the building and the area and would not be harmful in that regard.

15. There is no strong evidence before me to indicate that the social or communal value of the pub is an important reason for the designation of the conservation area or its inclusion within it. Whilst there would be some loss of communal value, it does not reach the threshold, either in terms of effect on the limited heritage significance of the building or on the significance of the conservation area, to amount to material harm.

16. I consider that the Council considerably overstates the importance of the Alexandra to the vitality and vibrancy and, therefore, character of the conservation area. In its absence, the area would retain a mixture of uses, including another pub, the Clissold Arms, almost directly opposite. Its décor and atmosphere is apparently different to that of the Alexandra, less traditional and more contemporary, but that, as I have already observed, is not a strong heritage argument in this case. Given that vitality and vibrancy is not of critical importance to the significance of the conservation area, that, in any case, evolution and change is an inherent component of vitality and vibrancy, and that residential uses are an established part of the mix in this locality, the proposed change of use would not amount to material harm to heritage interests.

17. The Council and third parties refer to other instances of threats to traditional pubs and other appeal decisions. In particular, the Council has referred me to three decisions[3] in The Royal Borough of Kensington and Chelsea. I have considered those decisions carefully and accept that there are some parallels between them and the current appeal but there are also some important differences. For example, whilst each involved changes of use from traditional pubs to residential use and they shared a common statutory and national planning policy context, the development plan context was different. The earlier decisions support the principle that a pub use is capable of contributing to the significance of a conservation area as a heritage asset. However, it is apparent from the decisions that the particular character of the conservation areas (two of which were the same) and the location and roles of the uses within them were distinctive. The Inspector in the Phene Street appeal, within the Cheyne Conservation Area specifically said that those factors were paramount in his reasoning. Moreover, the historic and aesthetic value of the buildings differed and the Inspectors did not reach the same conclusions on community value. In matters such as these, fine distinctions can be significant

[3] APP/K5600/A/12/2172028, 2175522, 2172342 and 2177513

and it is my judgement that, taking into account the established principle that each case should be considered on its merits, there are important differences between the earlier appeals and the current case.

18. Overall, therefore, I conclude on the main issue that the conversion to residential use of the appeal premises would not result in material harm to the building as a non-designated heritage asset of limited significance. Consequently, the scheme would be acceptable with regard to the objectives of *London Plan* Policy 7.4, which seeks a high quality design response to local character, and Policy 7.8, which requires development to conserve heritage assets. There would be no conflict with Policy SP12 of *Haringey's Local Plan* (LP), which seeks to conserve the historic significance of the borough's heritage assets. Nor would there be conflict with Paragraph 135 of the *National Planning Policy Framework* (the Framework), which requires the decision maker to take account of the significance of a non-designated heritage asset and to reach a balanced judgement regarding the scale of any harm.

19. Furthermore, there would be no material harm to the significance of the conservation area, a designated heritage asset, and its character and appearance would be preserved. Accordingly, the duty, under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area, is satisfied. Similarly, the proposal would satisfy paragraph 132 of the Framework, which requires great weight to be given to the conservation of designated heritage assets. It follows that the local policies referred to above would also be satisfied with regard to the effect on the conservation area.

Community Facilities

20. In addition to the Council's objection on heritage grounds, third parties raise the related matter of the general community value of the pub. Reference is made to the Framework, which says at paragraph 60, albeit in the context of design, that it is proper to seek to promote or reinforce local distinctiveness. Paragraph 7 states that there is a social as well as environmental and economic dimension to sustainable development, which is a key tenet of the planning system. Paragraph 69 says that planning decisions should aim to promote opportunities for meetings between members of the community. Paragraph 70 requires, among other things, that planning should seek the provision of community facilities, including pubs, and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.

21. I will not repeat all that I have written in relation to the main issue, above. To reiterate, briefly, whilst a significant section of the community clearly lament the closing of the pub, as it provided an opportunity to meet and socialise, it has not been clearly demonstrated that it provided a uniquely important facet of local distinctiveness or that it was universally valued by a wide cross-section of the community.

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.

23. Notwithstanding its conclusion with regard to past and future viability as part of the ACV process, the Council does not refer in this case to any specific local planning policies requiring examination of future viability. Past trading performance, the cost of necessary refurbishment of the building, its shortcomings in terms of size and configuration, together with the realism of the marketing exercise are all disputed. However, overall, the evidence I have been given regarding viability and future potential does not enable me to conclude with certainty that the loss of the pub would be unnecessary in the terms of paragraph 70 of the Framework.

24. Were the pub use to be re-instated, the different owners might well introduce a different business model and character. Moreover, whilst the Clissold Arms is said to have a different character, it is not the role of the planning system to protect one business or business offer from another or from market trends. In addition to the Clissold Arms, there are other pubs in East Finchley and Muswell Hill centres, each a few minutes walk or short bus ride away. Therefore, it has not been argued convincingly that the loss of the Alexandra reduces the community's ability to meet its day to day needs in the context of this well-developed part of north London.

25. I accept that the pub will have generated some economic benefits, through employment and, possibly, spend on other services, including from tourists, but there is no strong evidence that the benefits were substantial or that the effect of the proposal on other local businesses would be significant. Conversely, the appeal scheme would result in a net gain of one dwelling and a qualitative gain in terms of the quality of the dwellings. Moreover, there is clear evidence that near neighbours, particularly those living in the immediately adjacent Fortis Green Cottages, would benefit significantly from a reduction in problems of noise and anti-social behaviour. the appeal scheme would secure a viable future for the building which, according to the photographic evidence, was very run down and vandalised prior to current building works. All in all, therefore, there would be no clear or strong conflict with the objectives of the Framework with regard to the retention of community facilities and its role in the achievement of sustainable development.

26. Third parties argue that the proposal would conflict with LP Policy SP15. The policy seeks to safeguard and foster the borough's cultural heritage through, among other things, "supporting the provision of new work spaces and social and cultural venues in all areas of the borough that support all formal and informal cultural and leisure activities". The provision of a new social and cultural venue is not at issue here and so that part of the policy has limited relevance. The policy also refers to "protecting and enhancing, where feasible, existing cultural facilities and access to cultural heritage throughout the borough". I have already concluded, in relation to the main issue, that the existing pub has only very limited significance in terms of cultural heritage,

thereby limiting the relevance of that part of the policy. The Council confirms that pubs fall within the policy's definition of leisure facilities. The second part of the policy refers to the protection and enhancement of sporting and leisure facilities in areas of deficiency. I concur with the Council's acceptance that, with the Clissold Arms and other pubs nearby, the area is not deficient in pubs. Consequently, I am satisfied that there would be no material conflict with Policy SP15.

27. It has come to my attention that the *Further Alterations to the London Plan* (FALP), adopted by the Mayor of London on 15 March 2015, contain the provision, at policy 4.8B(c), that local planning authorities should prepare a policy framework for maintaining, managing and enhancing local and neighbourhood shopping and facilities which provide local goods and services, and develop policies to prevent the loss of retail and related facilities that provide essential convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence. I have not been advised of any adopted LP policy to that effect and the Council does not seek to place weight on its emerging local plan, which as it is at an early stage, carries very limited weight.

Other Matters

28. I turn now to whether the proposal would be acceptable in other respects. The Council's committee report identified that the appeal premises are in a sustainable location and concluded that, given that it is not a designated town or local centre, and in the light of Policy SP15 and other policies which support housing provision, there was no objection in principle to the conversion of the appeal premises. It further concluded that the proposed alterations to the exterior of the building, which principally amount to small extensions to either side, a pitched roof to an existing rear extension and a guard rail to a roof terrace at the front, would be acceptable, particularly given that the existing appearance of the building would be largely retained.

29. The Council concluded that there would be an acceptable relationship with neighbouring dwellings, particularly the cottages to the rear, in terms of the living conditions of their occupiers, and would be likely to result in an improvement in terms of noise and disturbance. It also accepted the lack of dedicated parking provision, in view of the high accessibility rating of the site. It concluded that the two proposed dwellings would provide acceptable living conditions and would be acceptable with regard to sustainability and refuse storage. I see no reason to disagree with any of the Council's initial findings on those matters.

30. The Council confirms that the proposal is eligible for the Community Infrastructure Levy. In addition, had it approved the scheme, the Council would have required a financial contribution towards affordable housing, to be secured via a s106 Agreement. There is no legal agreement or planning obligation in place and the appellant argues that an affordable housing contribution should not be required in the light of changes made to the government's *Planning Practice Guidance* (PPG) in November 2014. Those changes exempt schemes of fewer than 10 dwellings from the requirement to provide a contribution to affordable housing and also set out the terms of a 'vacant buildings credit'. The Council has not contested the appellant's argument on this matter and, in view of all the facts of this case and the up to

date expression of national policy provided by PPG, I consider that a contribution to affordable housing is not required.

31. Overall, therefore, in the light of the submitted evidence, the Council's committee report, third party representations, other relevant evidence and the local and national policies referred to, I am satisfied that, subject to appropriate conditions, the proposal is acceptable in all respects, including its effect on the character and appearance of the conservation area and its effect on the living conditions of nearby occupiers.

Conditions

32. I have considered the Council's suggested conditions in the light of national policy and guidance[4] and for succinctness and clarity and have amended them accordingly where necessary. In addition to the usual commencement condition, it is necessary, in the interests of proper planning and for the avoidance of doubt, to specify the approved plans. In the interests of the character and appearance of the area and because the front of the building is prominent and open to the pavement, full details of external materials and of the refuse storage structure and front light well should be submitted.

33. In view of the restricted site and proximity of neighbouring dwellings, there are exceptional grounds which justify the removal of permitted development rights with regard to alterations and extensions and buildings and structures within the curtilage. It also necessitates a condition requiring a construction management plan to be submitted, for which I have amended the suggested condition. The submitted drawings show the retention of the existing pub sign on the front of the building; it is not, therefore, necessary to impose a condition to that effect or to require approval of any replacement.

Conclusion

34. For the reasons set out above, the appeal should be allowed.

Nicholas Taylor

INSPECTOR

[4] *National Planning Policy Framework* (paragraphs 203 and 206) and *Planning Practice Guidance* (Use of conditions)

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered: 985.12-100-A, 985.12-101, 920.17.102-A, 929.17.103, 985.12.200, 985.12.201, 985.12.300A and 985.12.301A.

3) Notwithstanding the description of materials in the application, no development shall take place until details of the materials to be used in the external surfaces of the development, including glazed screens, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall take place until details of the proposed screened refuse and recycling storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) No development shall take place until details of the proposed front light well have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the dwellings hereby permitted shall not be altered or extended, nor shall any building, structure or enclosure (other than those approved as part of this permission, including the discharge of conditions) be erected within the curtilage of the dwellings.

7) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The plan shall, among other things, provide for measures to minimise any disruption to occupiers of adjoining buildings and to traffic and pedestrians on Fortis Green, particularly during peak periods.

End of schedule