

FREETHS

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Our Ref: MB/2103795/2

Dear Madam

HORSE AND GROOM, WOODGREEN, FORDINGBRIDGE– ACV REVIEW

We write further to the provision of the nominating party's comments and we now have the following points to make to you:

The Field is not of community value

1. The first point of note is that the nominator admits that the Field is not of community value and it must therefore be specifically excluded from the listing given the absence of evidence of community value. It goes without saying that if there are no reasons for considering the Field to be of community value, then it cannot form part of the Listing given its physical and functional separation from the remainder of the nominated land.
2. For the avoidance of doubt, we enclose a further plan which identifies the boundary of the development land, hatched red, and the land to be used as an accessway to the development land, cross-hatched in black.

No community nomination

3. In addition to the fact that the Field is not of community value and must in any event be de-listed, there is a compelling argument for saying that the nomination was not a community nomination in any event. We will explain why below.
4. The writer was involved in the case of *Hamna Wakaf –v- London Borough of Lambeth* [2016] UKFTT CR/2015/0026 (GRC) which (although not binding authority since it was only made by a lower Court) provides a useful discussion of the practical effect of deficiencies contained in asset of community value nominations and the approach that a local authority may take to those deficiencies. Specifically, Hamna Wakaf confirmed that the local

authority has a discretion to waive a requirement of regulation 6 of the Asset of Community Value (England) Regulations 2012 (“the **Regulations**”), where:

- a. the local authority reasonably concludes that no substantial prejudice would be caused by doing so;
 - b. the nominator makes good its failure; and
 - c. there is no procedural unfairness in the local authority exercising these powers.
5. In this case the plan that identified the land nominated to be listed as an ACV, which accompanied the nomination, is enclosed (“the **Nomination Plan**”). The local authority will note the requirement of Regulation 6(a) that the nomination, to be a “community nomination” (which is the only type of nomination which can lead to a listing of land as an ACV), must include “a description of the nominated land including its proposed boundaries”.
 6. It is our client’s respectful submission to you that the nomination and the Nomination Plan were defective in that they failed to provide a description of the boundaries of the land nominated, as required by Regulation 6(a). The nomination merely identified the land to be listed as the Horse and Groom public house, and the plan enclosed with the nomination showed the words Horse and Groom (ph) over the Field and not the public house, leading to the current debacle where the nominator now belatedly insists that “*the ACV nomination only includes the land and buildings currently being used by the village pub in its trade and not the field referred to in Freeths letter of 16th June 2017*”.
 7. Although the nominator has tried to describe “*the boundary fence between the field(s) on the right and the pub garden with some of its seating and umbrellas on the left*” it remains unclear exactly what land it says requires to be listed in connection with what it describes as the pub trade, leaving the remainder of the boundaries of the land intended to be nominated still undefined.
 8. The situation is not acceptable since, despite being provided with an opportunity to correct its error, the nominator has still failed to provide a proper description of the boundaries of the property it has nominated, so much so that there is now procedural unfairness being caused to our client in playing a continual guessing game as to the nominator’s position.
 9. A nominator must have known with precision what land it was that it nominated, at the time the nomination was made. The statutory requirement was for a description of the land nominated including of the proposed boundaries. The requirement was not complicated to comply with.
 10. The nominator has failed to come forward with that information, despite being given an opportunity to do so. The nominator’s yet further failure evidences the fact that the original nomination must fail for want of certainty as to the land nominated to be listed as an ACV.
 11. The Council must therefore remove the entirety of its land from the list of successful ACV nominations. This is the only fair way to proceed given that:
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- a. neither the nomination nor the Council's decision making report consequent upon the nomination distinguished between the parcels of land contained within our client's title;
- b. the plan describing the land nominated identified the pub as comprising the Field as well as the buildings;
- c. the nominator has still not adequately defined the land nominated as required by regulation 6(a);
- d. it is our client that is being prejudiced by the nominator's seemingly endlessly moving target and the Council's failure to accurately identify the land initially nominated and determined to be listed.

We look forward to receiving confirmation of your decision in this listing review.

Yours faithfully



Freeths LLP

Maronne

I believe its the area
I've hatched.

Regards
Nick

