

**DECISION NOTICE  
ACV – THE QUEENS**

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**Introduction**

- 1) The Localism Act 2011 (hereafter referred to as ‘the Act’) requires local authorities to keep a list of assets which are of community value. Once an asset is placed on the Assets of Community Value (ACV) list it will usually remain there for five years. The effect of listing is that 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 the period, known as “the moratorium”, will allow a 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.

**Nomination**

- 2) This is the fourth application to list The Queens, High Street, Selborne, Alton, GU34 3JJ (hereafter called ‘The Queens’ or ‘the Land’). The Nomination was made by the local parish council, namely Selborne Parish Council. In support of their nomination I have received:
  - A completed ACV supplication form along with the minutes of a meeting dated 16<sup>th</sup> May 2018;
  - Appendix and supporting evidence;
  - An undated letter received on the 20<sup>th</sup> July 2018, and
  - An email dated 7<sup>th</sup> August 2018.
- 3) The following representations have been submitted on behalf of Property Owner, 221 Limited, namely:
  - A letter dated 9<sup>th</sup> July 2018, a valuation report with representations from Scott Stemp;
  - A letter dated 30<sup>th</sup> July 2018.

- 4) There were various issues raised in relation to this Nomination. I consider they could be summarised as:
- i. The application before me is the fourth attempt to list the Queens as an ACV and is similar to the three previous applications, save for the incorporation of a limited company by a proposed community interest group;
  - ii. The Land does not satisfy the test set out in Section 88(2)(b) of the Act.

## **Discussion**

- 5) Section 88(1) and (2) of the Act provides as follows: -

*88(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.*

*88(2) For the purposes of the 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."*

- 6) Both parties acknowledge that the Queens has been closed for a number of years and it is not disputed that there is no "actual current use" of the Queens that furthers the social wellbeing and/ or social interests of the local community. Therefore, I conclude the test set out in Section 88(1) has not been satisfied. I therefore go on to consider the test set out in Section 88(2).

## **Recent Past Test – Section 88(2)(a)**

- 7) In support of the application the Nominator asks me to conclude that because a decision was made in April 2018 that the recent test should be satisfied. This is a dangerous stance to take, although the Nominator has since provided articles and asked me to consider what was mentioned in previous applications and the oral evidence entered at the review hearing.
- 8) It does not seem beneficial to ignore the oral evidence that was provided at the previous hearing and written representations made in previous applications. On the basis of the ACV application, representations received in this and previous applications and the conclusion reached at the review hearing regarding Councillor Palmer's oral evidence, I am minded to conclude that the provisions of Section 88(2)(a) of the 2011 Act are satisfied.
- 9) However, just because I have concluded on this occasion that the provisions of Section 88(2)(a) have been satisfied, does not mean that this will be the case in future. Every Nominator should be reminded to address each part of the test in every nomination.
- 10) I would also add that the Queens has been closed since around April 2016. It is not disputed that any activities that could have taken place to further the social interests and social wellbeing of the local community definitely ceased on or around this date. Although "recent past" is not defined in the legislation, my view is that some of the representations made fell outside what I consider to be "recent past". Examples include articles written in 2010 and 2011. I have to question whether this test will be satisfied in future bearing in mind that the Queens has now been closed now for almost two and half years. Again, I make clear that "recent past" is not defined under the Act and what is "recent past" will be determined on the facts of each case.
- 11) To clarify, I conclude that the provisions of Section 88(2)(a) are satisfied.

## **Future Test – Section 88(2)(b)**

- 12) For the Queens to meet this test I must be satisfied that it is realistic to think that there is a time in the next five years when there could be a non-ancillary use of The Queens that would further the social wellbeing and social interests of the local community.
- 13) The concluding paragraphs of the Review Decision by Gill Kneller dated 11<sup>th</sup> May 2018 were referred and mentioned by both the Nominator and the Property Owner. I have reviewed all the representations and am minded to agree with the Property Owner that nothing has changed since the Review Decision, save for the introduction of a company limited by guarantee called "Save the Queens Ltd" (Previously called, "Selborne STQ Ltd") and one alternative option of bringing in

another pub company to run the Queens. The further alternative option was not supported by any evidence to show it was realistic.

14) I agree with the Nominator that the legislation does not require a Community Interest Group to be in place before a property is listed as an ACV. However, I am also not presented with any realistic scenarios and / or solutions as to how the Queens could be used within the next 5 years to promote the social interests and social wellbeing of the local community. Also, I still do not consider that the Nominator has overcome the conclusions reached at the Review Hearing regarding whether it will be realistic for Save the Queens Ltd to reinstate the Queens.

15) For instance, it is not disputed between the parties that there would be a significant cost to reinstating the Queens. I note by the Nominator's own admission in the Valuation Report that "significant investment [is] required to bring the property back into operational use". The Property Owner has suggested that it intends to convert the Queens into something other than a pub and has also taken steps to that endeavour. Putting aside the intentions of the Property Owner, there is still no realistic business plan in place or a realistic explanation addressing how Save the Queens Ltd will address the cost of turning the Queens back in to functioning pub. The Nominator says it is not required to provide a business plan and refers to two cases called Cronstone Ltd v Amber Valley Borough Council [2014] and Evenden Estates v Hove City Council & Anor [2015]. This is not strictly correct. What is actually said is that there is not a strict requirement to provide a business plan and that each case should be determined on its facts. To quote Evenden it states:

*"There is no legal requirement for the nominating body or the council to produce a worked out business plan. By the same token, however it should not be assumed that the requirement of Section 88(2)(b) will necessary be met, merely by a Micawber-like hope that something will turn up. A fact-sensitive analysis is called for. It is also necessary to emphasise the fact that what is "realistic" may admit a number of possibilities, none of which needs to be the most likely outcome."*

16) The evidence provided so far suggests some community support for reinstating the Queens. There is a question how far this support goes because there is very little detail about the persons involved. The representations suggest that Save the Queens Ltd has 90 members which is made up from different people from different backgrounds. This is surprising because there have not been many complaints to the Council's Community Department or a suggestion that the closure of the Queens has had a negative impact on the community. No list or detail is provided regarding who these people are save for the comment that 83 of them are from within the village and they are from different backgrounds.

17) Although the current case law suggests that it is important not to concentrate too closely on a hard headed commercial or financial analysis, I still have to consider the options presented are realistic. As mentioned, although a detailed business plan is not necessarily required, it would in addition to other evidence such as how Save the Queens Ltd are going to source the funding and whether there exists knowledge of how to run a public house, provide an evidential basis as to how realistic it will be for the Queens to be reinstated. There will be a significant cost in purchasing the property and by the Nominator's own evidence, there will also be a significant cost to reinstating the property. Although each decision is based on its own facts, I am persuaded by the approach taken in *Uptin House, v Newcastle CC* [2017] in determining whether a property that requires investment will be able to be reinstated when there was significant evidence of community support. I do not consider there is as much support in relation the Queens as there was in this case. I also do not consider having considered the representations, the Nominator has provided enough evidence to show the intentions of Save the Queens Ltd are feasible and therefore realistic.

18) Taking all the representations into consideration, I cannot reasonably conclude that it is realistic that there will be a time in the next five years when there could be a non-ancillary use of the Queens that would further the social wellbeing and social interests of the local community.

19) I therefore conclude that the provisions of Section 88(2)(b) are not satisfied.

### **Conclusions and Comments**

20) I therefore conclude that the Queens does not meet the requirements of section 88(2)(b) of the 2011 Act and shall remain on the List of Unsuccessful Nominations.

21) I would also reiterate the comments made by the Property Owner. Even if the Queens was listed as an ACV, it would not automatically bring back a pub or compel the owner to reinstate the building as a pub. The scheme was designed to provide a moratorium of not more than 6 months, for Community Interest Groups to put in a bid for listed property after a Property Owner expresses an interest in carrying out a relevant disposal (such as selling the land to an unconnected third party). Again, it does not compel the Property Owner to sell to a Community Interest Group or restrict Property Owner from selling a certain price. After the moratorium period ends the Property Owner will be free to carry out a relevant disposal with any person. If a relevant disposal takes place, then the listed property will be taken off the Council's ACV List. If the Nominator or another body wanted the ACV to be placed on the list again, then it would have to re-nominate the Queens and go through the listing process again.

22) I realise Selborne Parish Council will be disappointed with this conclusion that the Queens should not be listed as an ACV. I would suggest the Nominator seriously consider their position regarding

trying to list the Queens as an ACV again. It became apparent after reading some of the representations that there might be some alternate reason / motive behind trying to list the Queens as an ACV. I wish to emphasise that the ACV process is not a mechanism to undermine suggested development plans made by a property owner or influence the sales value of the property.

**Officer: Tracey Wood**

**Dated: 10<sup>th</sup> September 2018**