

Assets of Community Value: Listing Decision Notice

Date of Nomination Application: 13 August 2015

Application Number: ACV2/2015

Nominated Asset: Foxley Hatch Pub

Site Address: 8-9 Russell Hill Road, Purley CR8 2LE

Ward: Purley

Nominator: Croydon and Sutton CAMRA (Campaign for Real Ale)

1. Outcome of Listing Decision: The Head of Communities, as listing decision maker, having regard to the relevant statutory provisions within the Localism Act 2011 (“The Act”), the Assets of Community Value (England) Regulations 2012 (“The Regulations”) and in so far as is relevant, the non-statutory guidance (“Community Right to Bid: Non-Statutory advice note for local authorities”, October 2012), has considered the nomination application, the supporting documentation and the nomination report and concluded, for the reasons set out in the decision notice below that:

- a. The nominator does satisfy the requirements of a community or voluntary body
- b. The nominator does not satisfy the requirements of a community nomination
- c. The Listed Asset should not be listed as an Asset of Community Value;
- d. Instructs that the asset be placed on the list of unsuccessful Community Nominations and that interested parties (and local land charges where relevant) be notified accordingly.

2. Background to Decision:

1. The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 set out the opportunities and procedures to follow for communities wishing to identify assets of community value and have them listed.
2. The Council is required to list an asset only in response to a valid community nomination and provided that the land is of community value.

3. Land is land of community value if, in the opinion of the Council:

- an actual current use (not an ancillary use) of the building or other land is one that furthers the social wellbeing or social interests of the local community; AND
- it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community (whether or not in the same way as the current use).
[Section 88(1)(a) & (b)]

OR

- there was a time in the recent past when an actual use (not an ancillary use) of the building or other land is one that furthered the social wellbeing or interests of the local community; AND
- it is realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building or other land that would further the social wellbeing or social interests of the local community (whether or not in the same way as before).
[Section 88(2)(a) & (b) of the Act]

3. Nominator:

The Statutory requirements which the Nominator must meet in order to be eligible to make a community nomination within the meaning of the Act are set out below with the listing officers' assessment of each requirement.

In this regard the Nominator referred the Council to the decision of the First Tier Tribunal decision in *St Gabriel Properties Ltd V Lewisham LBC*, CR/2014/0011 where Judge Warren held that the South East London Branch of CAMRA (which was the nominator in that case) was subject to a type of hybrid treatment. CAMRA according to Judge Warren is a company limited by guarantee and this was said, in turn, to govern the characterisation of the branch and whether or not the requirements regarding distribution of surplus were satisfied under Regulation 5(1)(e) by the nominator. The Judge went on to assert that it was then the activities of the branch, rather than the national activities of CAMRA which will determine whether the branch has a local connection within the meaning of Regulation 4. The Judge thereafter indicated that even if he were incorrect in this assessment, he was satisfied that the Nominator in that case could have qualified as an unincorporated body within the meaning of Regulation 5(1)(c) as he was so satisfied based on the actual evidence before him of what the branch did with their funds.

In the case before the Council, the Council has no information from the Nominator as to what the branch does with its funds, how these are applied and whether or not these surplus funds are applied wholly or partly for the benefit of the local area or how or whether it may receive funds from the central body. All the Council is told by the nominator is that "Surplus funds raised are ... held centrally" and that the Articles of Association of the national body do not permit the distribution of surplus to its members.

- a. Is the nominator a voluntary or community body within the meaning of Regulation 5?

The Nominator is the “Croydon and Sutton CAMRA(Campaign for Real Ale)”. The Company Registration number and Articles of Association relation to the national body not to an entity called the “Croydon and Sutton CAMRA” which is said be a local branch. The covering correspondence to the nomination application states that the “branch” has over 1700 members in Croydon and Sutton, of which 1000 they state live in Croydon. The Nominator has forwarded a copy of a “model” constitution for branches of CAMRA which it indicates has been adopted by the branch, although no signed copy is provided. The Council is not provided with any details of the members said to live in Croydon. Accordingly, in the event that the Council is not satisfied that the requirements of Regulation 5(1)(e) are applicable to the nominator, there is insufficient information provided by the nominator which would permit the Council to verify whether the nominator could meet the requirements of Regulation 5(1)(c) in the alternative.

Assessment:

Regulation 5 sets out that a nominator is regarded as a voluntary or community body if it is:

*“(c) an unincorporated body—
(i) whose members include at least 21 individuals, and
(ii) which does not distribute any surplus it makes to its members;”*
[Regulation 5(1)(c)]

“(e) a company limited by guarantee which does not distribute any surplus it makes to its members” [Regulation 5(1)(e)]

The “nominator” is “Croydon and Sutton CAMRA” which is not a company limited by guarantee but a branch of a company limited by guarantee which is not a separate legal entity therefore an issue arises as to whether the nominator needs to qualify as a company limited by guarantee in its own right and whether the local branch does satisfy the statutory requirements of regulation 5(1)(e).

The legislation clearly sets out the types of entity which qualify as a voluntary or community body identifying specific types of legal entity and applying further criteria to whether or not such legal entities would meet the requirements of the legislation.

I accept for these purposes the analysis of Judge Warren set out above, namely that CAMRA is a company limited by guarantee and that this in turn governs the characterisation of the branch and whether or not surplus is distributed to members for the purposes of regulation 5(1)(e). As such, I am satisfied that regulation 5(1)(e) is met.

- b. Does the nominator have a local connection within the meaning of Regulation 4 of the Regulations and Section 89(2)(b)(ii) of the Act?
- (i) Are the body’s activities wholly or partly concerned with the local

area or with a neighboring authorities' area?

Assessment: The Articles of association of the body supplied indicate that it is a national organisation with objects which do not relate specifically to Croydon or the local area but are generally around promotion of real ale and its consumption. In addition, they have an objective of retention and reinstatement of facilities of the "traditional British pub including the public bar". None of these objectives relate specifically to Croydon or a neighboring Borough however the application states that "the branch" run campaigns to save local pubs in the area, presents awards to pubs in the area, nominates a local pub of the year in the area and "hosts meetings in the local pub and the local area". Bearing in mind that the "the branch" covers both Croydon and Sutton, it is not clear which local pub is being referenced here but certainly there is no indication within the nomination that the nominator makes use of the asset they wish to have listed for these purposes.

Having reference again to the tribunal decision in St Gabriel Properties set out earlier, Judge Warren found that it was the activities of the branch rather than the national activities of CAMRA which would determine whether a branch met the local connection requirements in regulation 4. On the basis of the detail provided within the nomination application, it appears that the local branch's activities meet the requirements of Regulation 4(1)(a). Accordingly it is necessary to consider whether the requirements of Regulation 4(1)(b) are also met.

- (ii) For a nominator within the meaning of 5(1)(c) (e) or (f) – is any surplus it makes wholly or partly applied for the benefit of the local authority area or for the benefit of a neighboring authority area [Regulation 4(1)(b)];

Assessment: Requirement not satisfied.

In the case before the Council, the Council has no information from the Nominator as to what the branch does with its funds, how these are applied and whether or not these surplus funds are applied wholly or partly for the benefit of the local area or how or whether it may receive funds from the central body. All the Council is told by the nominator is that "Surplus funds raised are ... held centrally" and that the Articles of Association of the national body do not permit the distribution of surplus to its members.

The Articles of Association indicate that the surplus is entirely applied to the objects of CAMRA but the Council has not been provided with evidence to indicate that the surplus is either wholly or partly applied for the benefit of the local authority area or for the benefit of a neighboring authority area as required by Regulation 4(1)(b).

4. Does the Contents of the nomination meet the requirements of Regulation 6 for a Community Nomination?

The Council may only list a building or other land pursuant to a valid community nomination. The statutory requirements for a valid community nomination are set out below followed by the reviewing officers' assessment of the requirements:

- a. Includes a description of the nominated land including its proposed boundaries

Assessment: There is no description of the land or its boundaries; reference is simply made to the address.

- b. Statement of all the information which the nominator has with regard to names of current occupants of the land and the names of the current or last-known addresses of all those holding a freehold or leasehold estate in the land

Assessment: Requirement satisfied. The nominator has included details and copies of land registry searches setting out the leaseholder and the freeholder of the property.

- c. The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value

Assessment: In this regard the nominator states the following:

- There is good access for disabled people at the pub
- There are good transport links available to/from the pub
- Free wifi is available for customers
- The pub has a great food menu enjoyed by the local community
- The pub hosts advertising for local events
- The pub is currently owned by Wetherspoons, who have included it on their recent list of pubs to be disposed of.
- It is one of only three pubs in the centre of the Purley district, and supplies the local community with value for money food and drink.
- Currently it benefits from the usual national Wetherspoons promotions, including their beer festivals.

- d. Evidence that the nominator is eligible to make a community nomination

Assessment: Not satisfied.

The nominator is the local branch of a national organisation however the Council has not, despite requesting the information, been provided with evidence that the requirements for local connection within Section 89(2)(b) (iii) read with Regulation 4 are met. In fact, the nominator stated in response to a specific request about how the surpluses are utilised by the branch, that all surplus funds raised are held centrally which would indicate that surpluses are not applied locally and accordingly the local connection requirement is not satisfied. A

community nomination is one made by a community or voluntary body with a local connection. The absence of a local connection means that the nomination is not a valid community nomination for these purposes.

5. Statements by Nominator as to use:

The nominator made the below statements regarding the alleged community use. No evidence is supplied in support of any of the statements. When asked specifically to provide information regarding community use, the nominator responded by stating that over 1800 people had signed a petition to the current leaseholders to retain the pub however this evidence is not supplied to the Council. In addition, the nominator made the statement that the asset was “well used” by local people again without any evidence submitted in support of this statement.

The nominator states:

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- Currently it benefits from the usual national Wetherspoons promotions, including their beer festivals.

6. Assessment

The pub is currently in use as a public house and the nomination relates to use as a pub accordingly the criteria against which the Council is required to assess this aspect of the application are the provisions of Section 88 (1) (a) and (b) These provide that in order for the Council to list the asset as one of community value the Council must be satisfied that:

- (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.

The only information which the nominator has provided in satisfaction of the statutory requirements is as set out in section 5 above and amounts to no more than a series of statements with no evidence supplied in support. This is despite being specifically asked by the Council to provide evidence in support of the nomination and for information as to how this furthers social wellbeing or social interests of the local community. In response the nominator simply stated that the pub was “well used” by local people. Accordingly the Council is not satisfied that the statutory requirements of Section 88(1)(a) are met on the basis of the information before it. As no current use has been established, the application fails for want of compliance

with the legislative requirements in this regard as both Section 88(1)(a) and (b) need to be satisfied (along with other legislative requirements) in order for the nomination to result in a decision to list as an asset of community value.

Review Decision

I confirm that:

Nominated Asset: Foxley Hatch Pub

Site Address: 8-9 Russell Hill Road, Purley CR8 2LE

Should not be an Asset of Community Value and included on the list of unsuccessful Community Nominations and that interested parties be notified accordingly.

Date: 7 October 2015

Name: Sharon Godman

Title: Head of Strategy and Communities

Signature:

Background Papers: Nomination form, correspondence from nominator's representative, report from the voluntary sector manager in relation to the application and attachments thereto.