



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID**

Tribunal Reference: CR/2014/0005
Appellant: Worthy Developments Ltd
Respondent: Forest of Dean District Council
Second Respondent: Save our Sun Committee
Judge: NJ Warren

DECISION NOTICE

1. My decision is that this appeal fails.
2. The decision follows a hearing at Cardiff on 11 September 2014 at which Worthy Developments Ltd were represented by Mr Roberts; Forest of Dean DC (“the council”) were represented by Mrs Hughes and the Save our Sun Committee were represented by Ms Windsor. I am grateful to all three for their assistance with the case.
3. 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

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compensation to an owner who loses money in consequence of the asset being listed.

4. This case concerns a former pub known as “The Rising Sun” at Woodcroft just outside Chepstow.
5. The building is about 150 years old and seems to have operated with some success as a pub and restaurant until 2010. It reopened in March 2011 but the brewery which owned it went into liquidation and it closed its doors probably in February 2012. During that time it served the local community as well as visitors to the area as a pub. It was also used as a meeting place by such groups as the Women’s Institute and the Parent Teachers’ Association.
6. In October 2012 Worthy Developments bought the pub. Their plan is for two four bedroom houses to be built on the site. An early application for planning permission was not pursued. A more recent application was rejected by the council in September 2014. Worthy Developments Ltd intend to appeal the refusal.
7. When news emerged of Worthy Developments Ltd’s intentions, a number of local residents formed the “Save Our Sun Committee” and began an energetic campaign to revive The Rising Sun as a pub, shop and delivery stop run by a not for profit organisation.
8. On 23 October 2013 they applied to the council for the pub to be listed on the register of assets of community value. The council did so and confirmed their decision on review. They accepted that both the past and the future conditions for listing were satisfied.
9. Worthy Developments Ltd have appealed against the review decision and challenged the council’s findings in respect of both conditions.

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10. The past condition is to be found in Section 88(2)(a) Localism Act 2011 which reads as follows:-

“ there is a time in the recent past when an actual use of the building... .. that was not an ancillary use furthered the social wellbeing or interests of the local community”.

11. The future condition is to be found in subparagraph (b) of the same subsection and reads as follows:-

“ 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... .. that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”.

12. Worthy Developments Ltd submitted that the pub was a commercial operation with a history of failure. There had been several unsuccessful tenants. It was submitted that, in the absence of any definition of the phrase “recent past” that a period of five years should be looked at. In the last five years the pub had operated only for either eleven months or eighteen months. It was submitted that it was necessary for the property to have been in beneficial use for a substantial amount of the last five years in order to have furthered the social wellbeing or interests of the local community.

13. I do not accept that this is the correct approach.

14. It seems to me illogical to seize on the period of five years, as some suggest, when applying the past condition. This figure is chosen because it is the length of time specified by Parliament over which the future condition is to be assessed. It seems to me, however, that Parliament’s failure to specify the precise period of five years when defining the past condition, cannot be taken as intending that the more precise period used in the definition of the future condition should be imported.

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15. Nor do I accept the submission that the community use, must necessarily be for “a substantial amount” of the recent past. In practice, no doubt, trivial or very temporary use will be disregarded as “ancillary” to a main use but there is no warrant for reading the words “substantial amount” into the statute.
16. On the material before me I have no hesitation in deciding that there has been a time in the recent past when the actual use of The Rising Sun as a public house has furthered the social wellbeing and interests of the local community.
17. In respect of the future condition, Worthy Developments Ltd asked me to have regard to their intention to develop the plot to provide two houses. I take that into account although I balance it with the fact that they have not yet obtained the necessary planning permission. I also take into account the remoteness of the public house which must compound the general malaise affecting public houses nationally.
18. The written submissions ask me to consider which was the more likely to happen, that planning permission should be obtained and houses be built, or that the building be revived as a pub? In my judgment, however, to approach the issue in this way is to apply the wrong test.
19. I agree with the council. The future is uncertain. Worthy Developments Ltd may or may not obtain their planning permission. They may or may not sell the land. The Save our Sun Committee may or may not see their plans reach fruition. It remains still a realistic outcome that The Rising Sun might return to use either as a traditional pub or as a pub/shop/community centre as envisaged by the committee.
20. My conclusion in this respect is reinforced by the pledges of support and petitions gathered by our Save our Sun Committee. It is true that they have not yet made an offer with a firm completion date but their proposals are not fanciful. It is enough that return to use as a pub or some other venture furthering the social wellbeing or interests of the local community be realistic.

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21. I took into account the detailed appraisals produced by Worthy Developments Ltd of the viability of The Rising Sun returning to community use. I accept that these demonstrate that there are obstacles. It is important, however, not to confuse commercial viability with what altruism and community effort can achieve. The calculations advanced by Worthy Developments Ltd do not, in my judgment, do not demonstrate that the committee's plans are not realistic. Although there was some discussion of the figures at the hearing, it does not seem to me necessary to go into further detail on this point. The legislation does not require a detailed business case at this stage.

NJ Warren

Chamber President

Dated 29 September 2014