



NCN: [2022] UKFTT 492 (GRC)

Appeal number: CR/2021/0004

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

Between

BASINGSTOKE TOWN LIMITED

Appellant

-and-

BASINGSTOKE AND DEANE BOROUGH COUNCIL

First Respondent

-and-

BASINGSTOKE TOWN COMMUNITY FOOTBALL CLUB

Second Respondent

Before:

JUDGE J FINDLAY

Determined on the papers, sitting Chambers on 15 March 2022

Decision

1. The appeal is dismissed. The provisions of section 88(2)(a) and (b) of the Localism Act 2011 (“the Act”) are satisfied.
2. This appeal was determined on the basis of the evidence available and before the planning appeal decisions were made on 6 May 2022. I am satisfied that my decision is compatible with the outcome of the planning appeal decisions.

Mode of Hearing

3. This has been a paper hearing which has been consented to by the parties. The form of remote hearing was P: paper determination which is not provisional. A face-to-face

hearing was not held because it was not practicable due to the Coronavirus pandemic and all the issues could be determined on the papers. The documents referred to are in and two electronic bundles of 1076 pages plus additional documents.

4. I considered it was fair and just to determine the appeal on the basis of the papers having considered Rules 2 and 32 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

The Background

5. The Act requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an Asset of Community Value (“ACV”) 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.
6. The Appellant appeals against the First Respondent’s decision dated 12 January 2021, upheld on review on 15 April 2021, to list the Camrose Football Stadium (“the Land”) as an ACV. The Land comprises two titles.
7. Basron is the freeholder of the land registered at HM Land Registry under the title number HP609233 comprising about 71% of the Camrose Stadium (“the Stadium”). The freehold of the remainder of the Stadium and the approach and car park about 29% is owned by Basingstoke and Deane Borough Council, the First Respondent, and is registered at HM Land Registry under title number HP737900.
8. Basingstoke Town Limited, the Appellant, is the registered proprietor of the residue of the term of ninety nine years granted by a lease dated 12 November 1953 which demised the land now owned by Basron as freeholder. The Appellant’s leasehold interest is registered under title number HP381983.
9. The First Respondent’s land is subject to a long leasehold interest created by a lease dated 17 May 1962 for a term of 92 years from 30 June 1960 held by the Appellant and registered with leasehold title HP381982.
10. The Second Respondent played football at Camrose for over 70 years and last played there in April 2019.
11. The Appellant submitted applications for planning permission on 23 September 2020 the Development Control Committee of the First Respondent refused the application for planning permission. Basron appealed the refusal on 17 March 2021 and at the date of the hearing the appeals are pending.

12. After leaving the Camrose in April 2019 the football club commenced a ground share with Winchester City Football Club and in September 2020 moved to Winklebury Football Complex (“Winkelbury Complex”) where it continues to play. The Winklebury Complex is a modern facility and has benefitted from investment by The Football Foundation and the First Respondent and the Hampshire Football Association.
13. The Second Respondent and nominating organisation was formed in July 2017 and a Save the Camrose Committee was formed whose primary objective is to demonstrate the community club’s ability to operate its own site and outline why the Camrose is the ideal place and rightful home for football in the community.

Relevant legislation

14. Section 88(2)(b) of the Act provides:

(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.

Section 88(6) In this section—

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

- (a) cultural interests;
- (b) recreational interests;
- (c) sporting interests.

Grounds of Appeal

15. The Appellant appeals on the following grounds:
 - a. The Land does not satisfy the second statutory condition in s. 88(2)(b) of the Act and should be removed from the ACV list.
 - b. In the 1990s Centerprise International Limited owned by Mr. Razzak had provided support by way of shirt sponsorship. Mr. Razzak was Chairman of the football club for 25 years from 1993 to 2019 and Honorary President from 1996. Overall, the financial support from Mr. Razzak and his companies has amounted to around £2,530,000 including around £930,000 by way of shirt sponsorship, donations of £250,000, and loans of £1,350,000 of which one million pounds has been written off.

- c. Football was originally played at the Stadium by a members club but due to declining membership and concerns over the personal liability of the trustees it converted to a company limited by guarantee in 1988 and then due to financial difficulties including threats of winding up petitions there was a restructuring involving the transfer of the assets including the lease to the Appellant.
- d. To be able to continue the club needed a financial benefactor. During the 1980s the football club had been supported financially by Mr Gordon Hall and his company, Basingstoke Press Limited.
- e. In the Business Case prepared by the Second Respondent in July 2017 it was acknowledged that Mr Razzak had injected considerable funds into the football club and without this financial support the football club would not have survived.
- f. Between 1996 and 2019 the club did not make an operating profit with the average crowd for the 23 to 30 first team matches played annually at the ground being between 300 and 400 including those paying concessionary rates. Mr Razzak had to provide financial support to meet both the costs relating to the facilities which for the period 2016 to 2019 amounted annually to between £110,000 and £120,000 and the football club's running costs amounting annually to about £115,000.
- g. The football stadium is now over 60 years old and the two artificial grass pitches are 32 years old. Substantial funding is required to refurbish and update the facilities to meet FA requirements. The need for a proposal for a new stadium due to the run-down nature of the stadium and the lack of funds was explained and publicised in the Statement of Community Involvement prepared as part of the public consultation on this proposal as early as 2012. Various options were considered and in collaboration with the First Respondent significant work was carried out to move forward a proposal to relocate to a new stadium.
- h. Mr Razzak made extensive efforts to relocate and improve the facilities and build a new stadium without success. In 2016 he decided that he would no longer continue his financial support but gave a lengthy period of notice whilst continuing his financial support until 2019 in order to enable alternative arrangements to be made.
- i. It is accepted that in order for it to be realistic to think that there can be, in the next five years, a non-ancillary community use it does not have to be the probable outcome. It is sufficient that such use is one of a number of possibilities. This has been confirmed recently by Lane J. in *R (oao TV Harrison CIC) v Leeds City Council* [2022] EWHC 130 (Admin). However, a possibility which is based on hope alone is not sufficient. It must be an outcome which is regarded as being sensible and practical to achieve. In the circumstances of this matter it must be realistic to think that the proposal is financially viable and achievable.
- j. "Realistic" in this context has its ordinary meaning. In the Cambridge Dictionary it is defined "as accepting things as they are in fact and not making decisions based on unlikely hopes for the future."
- k. The Appellant seeks to rely on the decision in *Carsberg v East Northamptonshire Council* UKFTT CR/2020/0004 and 0003 where it was stated that "*The term 'realistic' is not*

defined in the Act or in the Regulations. It is my view that Parliament deliberately chose this expression and it would not be appropriate to define the term further. The Department for Communities and Local Government's non-statutory Advice note offers no guidance. I find that the term 'realistic' should be interpreted as it is used in everyday conversation and language and I rely on The Oxford English Dictionary definition of 'realistic' as having to show a sensible and practical idea of what can be achieved or expected and representing things in a way that is accurate or true to life."

- l. This is a highly fact sensitive judgment which will depend on the particular circumstances of the individual case. Those circumstances have to be looked at in the round rather than each individual circumstance being looked at separately. It is the cumulative effect of all the particular circumstances that is taken into account. This exercise has been described by Lane J. in the *TV Harrison CIC* case as requiring a "holistic analysis."
- m. The circumstances in this case are such that notwithstanding the current refusal of planning permission it is not realistic to think that there will be a non-ancillary community use of the Land within five years. The Appellant invites me to consider the following circumstances:
 - a) the inability of the football club to make a profit whilst playing at the Listed Land;
 - b) the state of the Stadium and facilities and the cost of putting them into a useable state;
 - c) the funding of the ongoing costs;
 - d) the objectives of the Second Respondent and the financial position of the Second Respondent;
 - e) the availability, use and recognition of Winklebury Complex as the home ground of the Second Respondent;
 - f) the value of the Land;
 - g) the funding of the restoration of the Land, and
 - h) the intentions of the owner.

Grounds of Opposition

16. The First Respondent submits the following grounds of opposition:
 - a. The legislation does not require a detailed business case. The test of 'realistic to think' is consistent with a number of realistic outcomes coexisting. A fact sensitive analysis is required and what is realistic may admit a number of possibilities none of which needs to be the most likely outcome. The question is not whether such a use is more likely than not to occur but rather whether such a use is realistic in the sense of not being "fanciful" even though that use might not be the most likely scenario.
 - b. The current owner's intentions are relevant as part of considering the whole set of circumstances but are not determinative.
 - c. The one model of operating the Basingstoke Town Football Club was seemingly not profitable but this does not preclude possibilities of other enterprises or other uses (particularly community-based or community-operated) operating on different underlying financial basis occurring.
 - d. The costs of remediation and renovation costs have been increased by the Appellant's actions and inactions.

- e. The test is in relation to any qualifying use and is not confined to consideration of whether or not the Land can be used in the same manner as it was used in the past. Whether the Second Respondent can raise the resources to return the Land to its previous use is not relevant. Any inability to raise funds to return the Land to its previous use does not preclude possibilities of other enterprises operating from the Land or other uses being made of the Land.
 - f. The fact that suitable alternative facilities exist is not relevant to the issue because the question is not whether Basingstoke Town Football Club can feasibly return to the Land.
 - g. In relation to the submission that the acquisition costs of the Land are too great for a community-based enterprise and would render any such enterprise unviable and uneconomic, the planning authority may remain resistant to repeated attempts to secure permission for redevelopment and the finances of the owner may change substantially.
 - h. The owner's intentions are not determinative.
 - i. There is an active and involved community group in the form of the Second Respondent and the Save the Camrose campaign.
 - j. There are significant and substantial reasons for the planning applications to be refused.
 - k. The financial and economic position of the Appellant particularly set in the wider, social financial and economic position of recent events, e.g. the Covid-19 Pandemic do not operate to preclude as a realistic possibility that the Land might come back into a qualifying use within the next five years.
17. The Second Respondent submits the following grounds:
- a) Mr Rassak (page 29 of the Statement of Community Involvement) made a statement highlighting the importance of the football club to the community.
 - b) The case law supports the proposition that the question of what is realistic for the future is not a matter of veto by the landowner, the absence of a business plan is not significant, the language of the Act is consistent with a number of realistic outcomes coexisting, what is realistic may admit a number of possibilities and it is important not to confuse commercial viability with what altruism and community effort can achieve.
 - c) It is realistic to think that Mr Rassak will change his mind if his planning appeal fails. Once Mr Rassak realises that he is unlikely to obtain planning permission he may decide to opt for either a mixed use of the Land in a scheme which will included a significant element of community use or dispose of the Land to an entity prepare to develop community use of the Land.
 - d) The objective is for football to return to the Land. The Second Respondent would wish to buy the Land or at least that part of it which leaves it with a sustainable space for other club activities.
 - e) The Second Respondent enjoys widespread support in the Basingstoke area. The Second Respondent is run by serious football people and its Vice-Chair, Colin Stoker, is not only a retired Chartered Engineer but a former Club Captain and Manager.
 - f) It is realistic to think that with funding through a mix of loans, community grants (including from the Football Foundation) the Second Respondent might well be able to join in a mixed scheme of development which will result in the restoration of club football to the Land in conjunction with some limited development outside the curtilage of the stadium complex.
 - g) It is likely that experienced local contractors, suppliers and volunteers would be enthusiastic when invited to carry out work on a community project. The community effort is likely to be substantial.
 - h) There are very strong reasons for believing that the planning appeal will be refused.

- i) Although substantial funding will be needed to restore the land and its infrastructure to an acceptable standard the expenditure does not have to be upfront and can be phased over years.
- j) What it may be possible to achieve by altruism and an abundance of community effort should not be underestimated.

Conclusions

18. The task before me is to make a fresh decision standing in the shoes of the First Respondent. In reaching my decision, I have had regard all the evidence. The fact that I do not refer to a particular piece of evidence is not to be taken as indicating that I have not had regard to the same.
19. Mr Rafi Arif Abdul Razzak is the sole Director of the Appellant and the authorised person to submit representations on behalf of the Appellant. He put a large amount of money into the club. He says from 1993 to 2019 he provided either personally or through his companies more than £2.3 million and has written off £1m from the accounts of Basingstoke Town Football Limited. He states he has saved the club from bankruptcy twice. Mr Razzak has stated he will provide no more funding going forward.
20. It is not in dispute and I find that the Second Respondent was eligible to make the nomination.
21. The Land which extends to approximately 4.6 acres comprises the freehold titles HP609233 and HP737900. Until April 2019 the Land was used by Basingstoke Town Football Club (“BTFC”). BTFC used the Land known as The Camrose Football Stadium, since 1947. The Land was gifted for public recreational use by Lord William Berry in 1946.
22. The Land comprises the main stadium, a grass pitch, two all-weather practice grounds and the parking areas. The main stadium has a full-sized pitch surrounded by stands and some covered and uncovered terracing. Underneath the main stand there are changing and washing facilities, a treatment room, a laundry/kit room, a boardroom and toilets. The main stand sits up to 600 people and includes a press box. There is additional covered terracing, four double turnstiles, separate toilets, a club shop, offices for administration and football storage facilities. Within the car parking area there is a large clubhouse, a betting shop, storage units and a car wash. The overflow carpark is used by the nearby Pizza Express and the communications mast was used to produce income.
23. The only issue before me is whether the conditions of s. 88(2)(b) of the Act are satisfied. It is not in dispute that the conditions of s. 88(2)(a) are satisfied and I find that there was a time in the recent past when an actual use of the Land that was not an ancillary use furthered the social wellbeing or interests of the local community. I find that football was played on the Land for many years the end of 2019 and the clubhouse was available for community use throughout the week and on match days. The clubhouse was available for hire as a venue for community use.
24. In reaching my decision I have borne in mind that s. 88 of the Act defines ‘social interests’ as including cultural, recreational and sporting interests. I find that the end of 2019 is in the recent past taking into account the length of time over which football has been played on the Land and there has been community use of the Land..

25. In reaching my decision I have borne in mind that although the decisions of the First-tier Tribunal have no authority as precedents, the construction of s. 88(2)(b) set out by Judge Warren has been consistently followed and approved and in my view is the correct one.
26. In reaching my decision I have followed the direction of the High Court which approved the approach previously adopted by the First-tier Tribunal. The legislation does not require that there be only one “realistic” future use of the Land and several possibilities may be realistic. The legislation does not set out a requirement for it to be more likely than not that a potential use might come into being for it to be realistic. The fact that the most likely enterprise would not satisfy the conditions of s. 88(2)(b) does not mean that any other potential enterprise is unrealistic. In this appeal the direction of the High Court that *“It is only if the non-compliant scenario is so likely to occur as to render any compliant scenario unrealistic, that the non-compliant scenario will be determinative of the nomination.”*
27. I have borne in mind that the term ‘realistic’ is not defined in the Act or in the Regulations. It is likely that Parliament chose this expression deliberately and it would not be appropriate to define the term further.
28. I have borne in mind that the word “realistic” in the ACV regime bears its normal meaning and means “having or showing a sensible and practical idea of what can be achieved or expected.”
29. I find that there are a number of realistic future uses of the Land. The Appellant may be granted planning permission and proceed to develop the Land with or without some provision for community use of part of the Land. The Appellant may not be granted planning permission and decide to consider other options for the land which may include future community use. The Appellant may decide to dispose of the Land which would give the Second Respondent the opportunity to create a community sports hub including football facilities. The Appellant may decide to sell the Land to the Second Respondent or otherwise join with the Second Respondent to promote a scheme involving a mix of community and other uses and work towards a community use of the Land. In these uncertain economic times, I find that all the above are realistic future uses of the Land.
30. The Appellant submits that a viable and sustainable business plan is required in this appeal because the Land differs from the type of assets considered in many cases of the First-tier Tribunal. This is because of the substantial capital sums required to enable a use to be possible, the absence of funding to provide such capital and the absence of a possible undertaking which can be carried on or upon the Land in a financially viable manner whether by the Community Club or another enterprise means the Second Respondent’s proposals are unrealistic.. In addition the Winklebury Complex which is available has modern facilities and is properly funded, in part by the Council, for the use by the Community Club.
31. The Appellant submits that the inability of BTFC to operate from the Land without the support of a substantial financial benefactor is relevant and shows that it is not possible to carry on upon the Land football activities or any other qualifying use in a financially viable manner. Whatever activities are proposed for the Land it will be faced the same financial difficulties.
32. The Appellant submits that the stadium and other facilities on the Land are in a poor state of repair, not safe and at the end of or past their life expectancy. Madlins Construction and Property Consultants prepared a detailed report with costings dated May 2021 for Basron

Developments limited to provide an estimate for refurbishing the stadium. The Appellant seeks to rely on this report to demonstrate that the cost of reinstating the football stadium, the all-weather 3G pitch, a new club house would be substantial.

33. The Appellant submits that the market value of the Land is substantial and on the open market would be too highly priced for a community group or a football club to be able to acquire it. Any enterprise seeking to acquire the Land and put it into a condition to be used cannot disregard these circumstances.
34. The Appellant submits that the Second Respondent has nominated the Land on the basis that it wants to undertake the restoration of the Land as a football stadium. No other alternative proposal has been put forward and none would be financially viable. In reaching my decision I have taken into account that I should consider all realistic uses of the Land which would further the social wellbeing or social interest of the local community and not just consider the restoration of the Land to a football stadium. I found that there are many types of leisure and community use of the Land which are realistic of which football is only one use.
35. I am not persuaded by the submissions of the Appellant that the sums of money involved in the possible purchase and restoration of the Land mean that the proposals are unrealistic. I do not accept that the acquisition costs are such as to preclude and possibility of the Land being put to a qualifying use in the next five years. In my view the capital sums involved do not mean that is necessary for the preparation and submission a more detailed plan of how the finance will be raised in order to establish that it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Land that would further the social wellbeing or social interests of the local community. I do not consider that the raising of funds will be mortally hampered by the provision of modern facilities at the Winklebury Complex. I am required to consider all potential future uses of the Land not just the playing of football.
36. In reaching my decision I have attached weight to the fact that with regard to the Second Respondent's plans detailed consideration has been given to the management structure, the marketing and publicity, funding opportunities, the likely income from extensive and appropriate usage, and a steering group of experienced and enthusiastic people has been formed to realise the aims.
37. In reaching my decision I have taken into account that there is a large swell of support for the provision of a sports hub and that the provision of other sporting facilities in the area including the provision of artificial pitches is limited in terms of accessibility and cost to users. On this basis it is likely that a sports hub would be well supported and used by the local community.
38. In reaching my decision I have taken into account that what is realistic is a matter of judgement and it is not a matter of veto by the Appellant and that it is important not to confuse commercial viability with what community enthusiasm and effort can achieve and the legislation does not require a more detailed business case at this stage.
39. I have considered whether taking into account the value of the Land it is realistic to consider that the Second Respondent would be able to raise the necessary finance to purchase and restore the Land to a use which would further the social wellbeing or social

interests of the local community. I have carefully considered the comments and points raised in Mr Razzak's supplementary witness statement of September 2021 and, in particular, the submission that the Second Respondent has put forward no plans or proposals for raising the funds to purchase the Land which would be necessary to obtain the funding for development.

40. I find that it is not necessary for more detailed plans to be submitted at this stage and that I am not persuaded that the purchase of the Land is not realistic. I have no doubt that such an enterprise would be difficult but I do not consider that it is wholly unrealistic. I do not accept that funding would not be available because funding has been given to the Winkelbury Complex. I accept the Second Respondent's submission that there would be various sources of funding available
41. The Land and, in particular, the stadium has been subject to anti-social behaviour since it was vacated in 2019. The Appellant appointed security contractors in July 2021 and measures have been taken to try to make the land secure. The Second Respondent submits that the Appellant should not be allowed to profit by securing the removal of the ACV listing on the basis that the repair costs have been made prohibitive by the Appellant's action and inaction. I find that when considering what is realistic in this appeal apportioning blame for the damage is neither helpful nor relevant to the issue to be determined.
42. The Second Respondent submits that the Appellant could have done more to protect the Land for potential future community use and a lot of the damage could have been avoided. In my view this is irrelevant to the issue before me.
43. In relation to the lack of profitability prior to 2019 I find that just because the Appellant was not able to operate the Land profitably does not mean that it could not be operated profitably and successfully with diverse and imaginative management. There is dispute between the parties about why the club was not breaking even. I accept that it was running at a loss, however, I do not accept that with a change of direction and leadership an innovative enterprise under new management could not break even or make a profit in the future. I find that past unprofitability does not automatically translate into future unprofitability taking into account that the Land could be used as a mix of footballing and other community related activities operating on a different financial basis. I find that there are other income-making opportunities for the land which have not previously been fully explored or exploited. I find that the Land could be made to prosper.
44. The Second Respondent will need finance to purchase and restore the land and I accept the submission that this could be done through a mix of loans, crowdfunding, community grants including from the Football Foundation, donations and a loan from the Charity Bank. There are many varied ways of raising finance which are realistic. In reaching this decision I have borne in mind that the Second Respondent has indicated that partners have been identified who might support a new project on the Land. The Second Respondent has given careful consideration to the diversity of sources of funding such as a Community Share scheme referred to in the Business Case dated 4 July 2017. There are a number of community responsible finance providers who lend to charities, social enterprise and community benefit societies and in July 2021 the Government established a Community Ownership Fund to assist community and voluntary groups to purchase assets. I do not accept that the open market value of the Land far exceeds a level which is feasible for a

community interest group to contemplate raising to acquire the Land and fund the renovation work.

45. In reaching my decision I have attached weight to the fact that the Director of Lending of The Charity Bank has expressed an interest in working with the Second Respondent.
46. I have taken into account that the Second Respondent has set realistic budgets and would be a not-for-profit mutual society and has stated an intention to operate within those budgets relying on regular board meetings and financial reports. I consider it significant that a marketing strategy has been identified and steps have been taken to use publicity to fundraise with a crowdfunding campaign and there are realistic proposals to manage the project. It is likely that there are a number of interested people who have useful, relevant and impressive skill-sets and who support the aims of the Second Respondent. It is likely there are many within the local community generally who would wish to join any community project going forward. I accept the Second Respondent's submission that there is a good volunteer capability in key areas and there is a wealth of experience among those involved. The commitment, experience, enthusiasm and innovation of a local community should not be underestimated and can be an impressive force in galvanising and leading forward a community project even one as capital heavy and complex as this one.
47. Crowdfunding is the use of small amounts of capital from a large number of individuals to finance a new business venture. Depending on the type of crowdfunding, investors either donate money altruistically or get rewards such as equity in the company that raised the money. Crowdfunding can be an extremely effective way of raising substantial amount of money in a short period of time that should not be underestimated.
48. I find that it is realistic to think that it would be possible for the Second Respondent to purchase the Land with funding through a mix of loans, community grants, crowdfunding and donations to enable a mixed scheme of development which will facilitate the restoration of club football to the ground with other community activities. It is very likely that local contractors, suppliers and volunteers would be enthusiastic about being involved in a community project.
49. The Appellant has submitted that the Second Respondent would not be able to obtain funding without acquiring the freehold and the loan to value of any loan has not been considered in the Draft Feasibility and Draft Business Plan and the Second Respondent has not explained how it is going to obtain and/or fund the remaining costs above 35% of the market value especially if any bank had a first charge on the land. Any redevelopment of the Land would fall into the class of a restricted use and the loan to value would be less than 65%.
50. I have given careful consideration to the above submission but consider that it does not take into account all the potential sources of funding as stated above where the loan to value of any loan would not be prohibitive.
51. I find that the plans and information provided by the Second Respondent are sufficient to establish that 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.

52. Accordingly, the appeal is dismissed

Judge J R Findlay

Dated: 15 March 2022