

# Developments in the Assets of Community Value regime

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# Presenter

Christopher Ian Cant | Barrister | Clerksroom

Chancery practitioner with nearly fifty years of experience

Author of Guides to Assets of Community Value; Overage; and Community Infrastructure Levy

Published many articles on these subjects and property law

# Agenda

## Welcome and Introduction

- Challenges to nomination
- What constitutes furthering social wellbeing
- Significance of financial viability
- Residential exclusion
- Listing authority's role in listing process
- Compensation Claims

# Key Issues

- (i) is nomination a valid community nomination
- (ii) is asset excluded from ACV regime
- (iii) is there or has there been in recent past non-ancillary use furthering social wellbeing or social interest of a local community
- (iv) is it realistic to think that there will be a non-ancillary community use in the future

# Challenges to nominations – qualifying nominator

Voluntary or community body – nature of activities

Local connection

Application of surplus

Unincorporated body –

21 local electors

not distribute surplus to members

constitution

common purpose – Russell v Bracknell Forest BC [2022]

UKUT 74 (ACC)

# Furthering social wellbeing

Public houses – not automatic qualification

Do members of local community socialise at the public house?

May be due to community events or informally meet up

Factors not prevent listing

- (i) gastropub
- (ii) Competitors
- (iii) Unsuccessful
- (iv) No need most or majority of users from local community
- (v) No requirement as regards frequency of activities – Future Properties v Babergh DC CR/2020/0010

# Furthering social wellbeing

Places of Worship – excluded from ACV regime?

General Conference of the New Church v Bristol CC CR/2014/0013

Factors in favour of qualifying as ACV

- (i) not included in Schedule 1 of 2012 Regulations
- (ii) para. 12 Schedule 3 – disposal of closed church pursuant to scheme
- (iii) charitable trust
- (iv) relevance of planning law
- (v) wide meaning of social welfare

Non-ancillary community use

# Furthering social wellbeing

## Open Spaces

Olivers Battery v Winchester City Council CR/2019/0001

Kites Wood – Mr. Ali v Rother DC CR/2022/0002

Contrast fields subject to public rights of way



# Realistic to think

Section 88(1)(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.”

Section 88(2)(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.

# Realistic to think

Realistic has ordinary meaning – Carsberg v East Northamptonshire CC  
CR/2020/0004

“What is realistic may admit a number of possibilities none of which needs to be the most likely outcome. Whether something is realistic does not mean that it must be more likely than not to happen. The presence of one possibility does not exclude the possibility of others.”

“I rely on The Oxford English Dictionary definition of ‘realistic’ as having to showing 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.”

# Realistic to think

Holistic approach to determine not what probable but what realistically possible – TV Harrison CIC v Leeds CC [2022] EWHC 1675 (Admin)

Lane J. “The legislation does not require there to be only one "realistic" future use of a building or other land. Several possibilities may each be realistic. The legislation does not require a potential future use to be more likely than not to come into being, in order for it to be realistic. The fact that the most likely of a number of scenarios is one which would not satisfy the statutory criteria (eg. a change of use from pub to residential) does not mean that any other potential future use is, without more, rendered unrealistic. 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.”

# Financial viability

Not viable

Carsberg v East Northamptonshire

Fernwick Limited v Mid Suffolk CR/2015/0024

Uptin House v Newcastle CC CR/2017/0006

Contrast

Basingstoke Town v Basingstoke & Deane BC [2022] UKFTT 310

# Business plans

Evenden Estates v Brighton & Hove CC CR/2014/0015 – no requirement for worked out business plan but equally cannot rely on “Micawber-like” hope

Annakut v East Herts CC CR/2019/0009 – spectrum running from profitable public house in reasonable condition to one which failed commercially, unsuccessfully marketed and fallen into disrepair with benefit of planning permission

Sanders v Stafford BC CR/2021/0006 – viability plans put in by owner and nominator

# Impact of planning law

If planning permission for different use –

STO Capital v Haringey LBC CR/2015/0010

If not been granted

Sanders v Stafford BC CR/2021/0006

Future Properties v Babergh DC CR/2020/0010

Greyhound Inn Developments v Bromsgrove DC CR/2017/0004

New Barrow Limited v Ribble Valley CR/2016/0014

# Residential Exclusion

## Schedule 1 paragraph 1

“1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence.

(2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if—

(a) the land, and the residence, are owned by a single owner; and

(b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.”

# Residential Exclusion

Separation from residence by due to road, railway, river or canal:

“(3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road, railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.

(4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.”



# Residential Exclusion

What is a residence  
temporarily unoccupied  
holiday dwelling  
hotel  
multiple occupation house

But not

land with planning permission for residence  
dwelling under construction  
dwelling but to be used for a different purpose in future

# Residential Exclusion

## Paragraph 1(5)

“Land which falls within sub-paragraph (1) may be listed if—  
(a) the residence is a building that is only partly used as a residence; and  
(b) but for that residential use of the building, the land would be eligible for listing.”

# Residential Exclusion

Wellington Pub Company v Kensington & Chelsea LBC CR/2015/0007

two fold test

(i) physical relationship

(ii) functional relationship

# Residential Exclusion

Donford v Bracknell CR/2021/0001

Paragraph 1 Schedule 1 2012 Regulations

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# Residential Exclusions

Public house with cottage in grounds

Public house with self-contained flat above

House over road from public house

House, field and public house

# Role of listing authority

Does listing authority have investigatory role?

Nomination – accept what stated in it?

Start of process – Judge Hughes in Admiral Taverns v Cheshire West and Chester CR/2016/0022

Mr. Ali v Rother DC - Judge Simon Bird QC – not accept limited to information provided with nomination

Site visit

# Challenges

Decision to list – review and then appeals to FTT on to Upper Tribunal and then Court of Appeal

Decision not to list – judicial review

TV Harrison v Leeds CC

Decision to remove on review or under reg. 2 – judicial review

# Compensation

## Regulation 14 of 2012 Regulations

“(2) The circumstances mentioned in paragraph (1) are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.”



# Compensation

Loss of capital value due to listing

St. John Ambulance v Teignbridge DC CR/2018/0003

Fielder v Harrogate BC [2020] UKUT 288 (ACC)

# Compensation

## Multiple causes of loss

Abbott v Stockton-on-Tees BC CR/2022/0004 - ACV listing one but not only material consideration in refusing planning permission

Judge Findlay: “It is not necessary to make a finding as to how much weight was attached by the planning committee to the listing in reaching the decision to refuse planning permission. On the basis of the evidence I find that the listing was a factor in the decision to refuse planning permission. In my view that is sufficient to satisfy the conditions of regulation 14(2).”

“I find that that because the ACV listing was a factor that was weighed by the planning committee in reaching its decision it cannot be said that the applications for planning permission would have been refused in any event on the basis of the evidence available.”

# Contact Details

The logo for clerkroom, featuring the word "clerkroom" in white and orange text on a dark blue square background.

clerkroom

T: 01823 247 247  
E: [clerks@clerksroomdirect.com](mailto:clerks@clerksroomdirect.com)  
W: [www.clerksroom.com](http://www.clerksroom.com)



DGLLEGAL  
Services for Lawyers

T: 01509 214 999  
E: [admin@dglegal.co.uk](mailto:admin@dglegal.co.uk)  
W. <https://dglegal.co.uk>