

WOKING BOROUGH COUNCIL

The Anchor Inn, Lower Guildford Road, Knaphill, Woking, Surrey, GU21 2PE

Review of Decision to List an Asset of Community Value

1. Introduction

- 1.1 On 15 January 2017, Woking Borough Council ("Council") received a nomination under Section 89 of the Localism Act 2011 ("2011 Act") to list The Anchor Inn, Lower Guildford Road, Knaphill, Woking, Surrey, GU21 2PE as an Asset of Community Value ("ACV").
- 1.2 The Council has delegated authority to its Strategic Asset Manager ("SAM") to determine nominations that an asset is an ACV.
- 1.3 On 3 May 2017, the SAM determined that The Anchor Inn was an ACV. This resulted in it being included on the Council's List of Assets of Community Value.
- 1.4 On 23 June 2017, Freeths LLP wrote to the Council requesting, on behalf of Premier Pubs Estate Limited, a review of the decision to list The Anchor Inn as an ACV.
- 1.6 On 28 July 2017, Freeths LLP submitted written representations in support of the review.
- 1.7 The Council has delegated authority to me, as Head of Democratic and Legal Services, to determine reviews of a decision to list an asset as an ACV.
- 1.8 Freeths LLP did not request an oral hearing. I agreed that an oral hearing was not required.
- 1.9 In undertaking my review, I have had regard to the following:
 - Localism Act 2011 ("2011 Act").
 - Assets of Community Value (England) Regulations 2012 ("Regulations").
 - Relevant case law.
 - The Council's "Asset of Community Value Procedure" (adopted 19 March 2015).
 - The Nomination Form received by the Council on 15 January 2017, and its appendices ("Nomination Form").
 - The SAM's decision on the nomination, dated 3 May 2017 ("Decision").
 - Freeths' letter to me dated 28 July 2017, and its appendices.
- 1.10 Insofar as findings of fact are concerned, I have determined the review on the basis of the evidence submitted and representations made.

2. The Review

- 2.1 I should record that, on 1 December 2016, I determined a review of an early decision to list The Anchor Inn as an ACV. However, for the purposes of the current review, I

have “started again” and reconsidered all of the relevant issues and representations made to me. In other words, if I made a finding in the earlier review, I will not automatically and necessarily make the same finding in the current review.

2.2 In undertaking my review, I have paid particular attention to the representations made by Freeths LLP in their letter to me of 28 July 2017. These representations were divided into two broad categories:

(i) Was the Council right to form the view that the nomination was a community nomination?

and

(ii) Was the Council right to form the view that The Anchor Inn satisfied Section 88(1) of the 2011 Act?

2.3 I shall, first, consider whether the nomination was a “community nomination”, as defined by Section 89 of the 2011 Act.

2.4 Insofar as this review is concerned, a “community nomination” means:-

“a nomination which ... is made ... by a person that is a voluntary or community body with a local connection.” (Section 89(2)(b)(iii) of the 2011 Act).

2.5 In order to decide whether the nomination was made by an organisation satisfying this definition, I must first determine who made the nomination.

2.6 Section 1 of the Nomination Form asks for details of the nominating organisation.

2.7 Section 1.1 of the Nomination Form asks for the title of the nominating organisation. This has been answered as:-

“CAMRA, the Campaign for Real Ale (CAMRA)”.

2.8 Section 1.4 of the Nomination Form asks for details of the purpose of the nominating organisation. This has been answered as:-

“CAMRA, the Campaign for Real Ale, is an independent consumer organisation campaigning for real ale, community pubs and consumer rights.”

2.9 Section 1.5 of the Nomination Form asks for details of the type of nomination organisation. This has been answered as follows:-

CAMRA is a not for profit company, limited by guarantee, registered in England with company number 1270286.”

The response then goes on to state that the nomination is being submitted by Surrey Hants Border Branch in line with the decision of Judge NJ Warren in *St Gabriel Properties Limited –v- London Borough of Lewisham and South East London Branch of Campaign for Real Ale CAMRA [2014] UKFTT CR/204/0011 (GRC) (“St Gabriel”)*.

2.10 Section 1.7 of the Nomination Form asks for the name, title and signature of the person submitting the form. This has been answered as follows:-

"Neil Thomas, Woking Area Representative Surrey Hants Borders Branch of CAMR, the Campaign for Real Ale"

- 2.11 The Nomination Form was accompanied by a Statement of Support, dated 10 May 2016, from Faye Grima (Campaigns Officer for CAMRA) in the following terms:

"I confirm that in putting forward the attached application to list Anchor pub as an "Asset of Community Value (ACV)" that Surrey Hants Borders branch of CAMRA is acting on behalf of and with full authority of the Campaign for Real Ale (CAMRA). CAMRA is a limited company, registered in England with company number 1270286."

For the reasons given later in this decision, I do not consider that I can give any weight to this document.

- 2.12 In the Decision, the SAM states that the nominating body (i.e. the nominating organisation) is the Surrey Hants Borders Branch of CAMRA (see, for instance, paragraphs 2.3(1) c), 3.2(c) of the Decision). I disagree with this conclusion.
- 2.13 My view is that Mr Thomas was purporting to submit the nomination form on behalf of CAMRA (i.e. the limited company registration number 1270286), not the Surrey Hants Borders Branch of CAMRA. This is clear from what is written in sections 1.1, 1.4, 1.5 and (to a lesser extent) 1.7 of the Nomination Form. There is no cogent evidence to support the view that the nominating organisation was the Surrey Hants Borders Branch of CAMRA. The Branch's involvement is, through Mr Thomas, limited to purporting to act on behalf of CAMRA (i.e. the limited company registration number 1270286).
- 2.14 I need to consider if there is evidence that Mr Thomas was authorised to submit the nomination on behalf of CAMRA (i.e. the limited company registration number 1270286). The Nomination Form was accompanied by the Statement of Support, dated 10 May 2016, from Faye Grima (Campaigns Officer for CAMRA) – see paragraph 2.11 above.
- 2.15 In paragraph 7.1 of their representations, Freeths LLP state as follows:-

*"7.1 The Owner contends that the Statement of Support purports to evidence that the Surrey Hants Borders Branch of CAMRA ("the **Branch**") had authority to submit the first nomination of the Property as an ACV on behalf of the Campaign for Real Ale Limited ("the **Company**"), which was submitted to the Council on 11 May 2016,. This is implicit from the date of the Statement of Support (being 10 May 2016, a day before the first nomination was submitted) and the words "I confirm that in putting forward the attached application to list Anchor pub ...". It follows that, without more, the Statement of Support is not evidence that the Branch was authorised by the Company as agent to make the Nomination. In particular:*

7.1.1 On a natural construction of the Statement of Support, the nature of the authority is limited to the first nomination of the Property as an ACV. It is not a blanket Statement of Support from a director or duly authorised person of the Company in relation to any nomination of the Property as an ACV

7.1.2 *There is no evidence that the Company authorised the Branch to rely on the same Statement of Support in submitting the Nomination.”*

- 2.16 I agree with the representations submitted by Freeths LLP on this point. It is clear from the face of the document, not least its date (10 May 2016) and the reference to the “*attached application*”, that it relates to the nomination submitted on 11 May 2016. That authority to act cannot be read across to apply to the current nomination, which did not exist when the Statement of Support was produced.
- 2.17 Mr Thomas has not submitted evidence to satisfy me that he is authorised to act on behalf of CAMRA (i.e. the limited company registration number 1270286) in submitting the nomination. There is no reasonable basis on which I am able to assume that Mr Thomas is acting with the authority of CAMRA (i.e. the limited company registration number 1270286). It must, therefore follow that I cannot reasonably find that CAMRA (i.e. the limited company registration number 1270286) is the nominating organisation for this nomination. In the absence of that finding, it would not be proper for me to go on to consider whether CAMRA (i.e. the limited company registration number 1270286) satisfies the requirements of Section 89(2)(b)(iii) of the 2011 Act, so that the nomination is a “community nomination”.
- 2.18 It may be that the Surrey Hants Borders Branch of CAMRA would have been an eligible nominating body if the nomination had been submitted by them. However, as indicated above, I have found that the stated intention of Mr Thomas was that the nomination was made by the CAMRA (i.e. the limited company registration number 1270286), not the Surrey Hants Borders Branch of CAMRA. As such, there is no basis on which I could find that the nominating body was the Surrey Hants Borders Branch of CAMRA.
- 2.19 The inevitable consequence of my conclusions, as set out in paragraphs 2.15 and 2.16 above, is that The Anchor Inn should not have been included in the Council’s List of Assets of Community Value. Accordingly, it is irrelevant whether the other requirements to list a property as an ACV are satisfied in the case of The Anchor Inn. As such, I have not considered the submissions made in respect of these matters, and make no findings in respect of them.
- 2.20 Before formally recording my decision on this review, I will make the following general comment. Some readers of this decision may suggest that I should have checked with CAMRA (i.e. the limited company registration number 1270286) whether they had authorised Mr Thomas to submit the nomination on their behalf. I do not regard this to be an appropriate action for me to take for the following reasons:-
- (i) The 2011 Act, the Regulations and the Council’s “Asset of Community Value Procedure” (adopted 19 March 2015) only provide for the owner, or owner’s representative, to make representations on a review of a decision to list a property as an ACV;
 - (ii) It is my practice to review decisions on the basis of the documents and evidence submitted, not seek to “plug” holes that I have identified. This is in the context that listing a property as an ACV impacts on an owner’s ability to

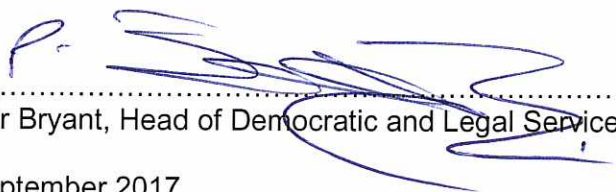
deal with that property, so it is reasonable that the person submitting the nomination should, from the outset, comply with the statutory criteria laid down by Parliament for dealing with ACVs.

2.21 I should record that, even if not expressly referred to in this decision notice, I have considered all points made in the Nomination Form, the Decision and Freeths LLP's representations in respect of the matters on which I have made findings.

3. Decision

3.1 I determine that The Anchor Inn should not have been included in the Council's List of Assets of Community Value. This is on the basis that the nomination submitted in respect of The Anchor Inn was not a "community nomination", so the requirements of Section 89(1)(a) of the Localism Act 2011 have not been satisfied.

Signed



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Peter Bryant, Head of Democratic and Legal Services

Date

7 September 2017

