

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 11 May 2016, 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 15 July 2016, 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 27 July 2016, Pitmans LLP wrote to the Council requesting, on behalf of Premier Pubs Estate Limited ("Premier"), the owner of The Anchor Inn, a review of the decision to list The Anchor Inn as an ACV.
- 1.5 On 26 August 2016, Freeths LLP wrote to the Council requesting, on behalf of Premier, a review of the decision to list The Anchor Inn as an ACV.
- 1.6 On 16 September 2016, Freeths LLP confirmed that they had been instructed to act for Premier in place of Pitmans LLP.
- 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, dated 11 May 2016, submitted by CAMRA ("Nomination Form") and appendices.
 - The SAM's decision on the nomination, dated 15 July 2016 ("Decision").
 - Freeths' letter to me dated 14 October 2016.
- 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 In undertaking my review, I have paid particular attention to the representations made by Freeths LLP in their letter to me of 14 October 2016. These representations were divided into two broad categories:

(i) Was the nomination a community nomination as defined by Section 89 of the 2011 Act?

and

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

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

2.3 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).

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

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

2.6 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)".

2.7 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."

2.8 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")*.

2.9 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."

Although the statement is not signed, I have no reason to believe that it was not provided by Ms Grima. It follows that, so far as CAMRA was concerned, the Surrey Hants Border Branch was acting on their behalf in submitting the nomination.

2.10 In view of (i) the information contained in Section 1 of the nomination form and (ii) Ms Grima's statement, I find that the nominating organisation was the Campaign for Real Ale (limited company number 1270286) ("Company"), and that the Surrey Hants Border Branch ("Branch") was acting for the Company in submitting the nomination. For the avoidance of doubt, I do not consider the Branch to be the nominating organisation.

2.11 In making this finding, I should record that I do not agree with the SAM's statement in Step A1 of section 4 of the Decision that:-

"From the evidence provided, that (sic) Strategic Asset Manager is satisfied that Surrey Hants Borders Branch of CAMRA is an eligible nominating body and satisfies Regulation 5(1) The Assets of Community Value (England) Regulations 2012."

It may be that the Branch would have been an eligible nominating body if the nomination had been submitted by them. However, as indicated above, I have found that the nomination was made by the Company, not the Branch. I should also record that had I been minded to find that the Branch was the nominating organisation, I have not seen any evidence that the Branch has at least twenty-one members, so satisfies the requirements of regulation 5(1)(c) of the Regulations in that respect. Without that evidence, I could not have found that the Branch was an eligible nominating body which satisfied the requirements of regulation 5(1)(c) of the Regulations (although I would be surprised if the Branch did not have at least twenty-one members).

2.12 For the purpose of this review, the Company can only be a "voluntary or community body" if it is:

"A company limited by guarantee which does not distribute any surplus it makes to its members." (Regulation 5(1)(e) of the Regulations).

2.13 It is clear (and not disputed) that the Company (i) is a company limited by guarantee and (ii) does not distribute any surplus it makes to its members (Article 5 of its Articles of Association prohibits distribution of its income or property to members). I, therefore, find that the Company is a "voluntary or community body" for the purposes of Section 89(2)(b)(iii) of the 2011 Act.

2.14 The next point to consider is whether the Company has "a local connection", thus satisfying the second limb of Section 89(2)(b)(iii) of the 2011 Act.

- 2.15 The local connection referred to by the Company in submitting the nomination was that of the Branch. Reliance was placed by the Company on the decision in St Gabriel.
- 2.16 Put simply, in St Gabriel, the learned Judge's approach was to treat the South East London Branch CAMRA and the Company in a hybrid way. This meant that reliance could be placed on:
- (i) the Company's status as a company limited by guarantee which does not distribute any surplus it makes to its members to satisfy Regulation 5(1)(e) of the Regulations, and
 - (ii) CAMRA South East London Branch's activities to satisfy Regulations 4(1)(a) and 4(1)(b) of the Regulations.
- 2.17 Freeths contend that the hybrid approach set out in St Gabriel has been rejected in the recent judgment of the First Tier Tribunal in Hamna Wakaf Limited –v- London Borough of Lambeth & Another [2016] UKFTT CR/2015/0026 ("Hamna"). In support of their contention, Freeths refer to four paragraphs of the Hamna judgement in particular. I shall consider each paragraph in turn.
- 2.18 Paragraph 48
- Freeths state that this paragraph records the agreement between George Lawrence QC (appearing for the First Respondent, London Borough of Lambeth) and David Elvin QC (appearing for the Appellant, Hamna Wakaf Limited) that St Gabriel was wrongly decided (insofar as the Tribunal had conflated the statuses of the Company and the CAMRA South East London Branch in order to bring the nomination within Regulation 5(1)(e) of the Regulations).
- 2.19 I note that this agreement was not said to be shared by the Second Respondent, CAMRA South West London.
- 2.20 In my view, the fact that Mr Lawrence and Mr Elvin agreed that St Gabriel had been wrongly decided does not mean that it was. Neither Mr Lawrence nor Mr Elvin (individually or jointly) are the determining body to make a formal judgment in respect of such a matter. I also note that the Tribunal in Hamna did not express a view on whether St Gabriel had been wrongly decided (insofar as related to the hybrid approach). This is not surprising as the issue in Hamna was whether CAMRA's South West London Branch was a qualifying unincorporated body within regulation 5(1)(c) of the Regulations, not, as was the case in St Gabriel, whether the Company satisfied the requirements of regulation 5(1)(e) of the Regulations. This meant that in Hamna, the Tribunal did not need to reach a view on the hybrid approach adopted in St Gabriel.
- 2.21 Paragraph 48 does not, in my view, support the conclusion that, in Hamna, the Tribunal rejected the hybrid approach set out in St Gabriel.

2.22 Paragraph 62

Freeths refer to this paragraph on the basis of the submission by Mr Simon Adamyk, on behalf of the First Respondent, that St Gabriel had been wrongly decided because the First Tier Tribunal had “*impermissibly conflated the different “heads” set out in regulation 5*”. The comments I made in respect of paragraph 48 of the judgment apply equally to this paragraph.

2.23 Paragraph 62 does not, in my view, support the conclusion that, in Hamna, the Tribunal rejected the hybrid approach set out in St Gabriel.

2.24 Paragraph 84

Freeths refer to paragraph 84 of the judgment. I agree that this paragraph correctly sets out the legal position in that (i) a local authority cannot waive the requirements of Regulation 5 or Regulation 4 of the Regulations, and (ii) one of the bodies described in Regulation 5 cannot take over and validate a purported nomination made by a body which does not fall within Regulation 5. This statement by Judge Peter Lane was made in response to a submission from Mr Elvin that the London Borough of Lambeth had been faced with an application purportedly made by a body falling within Regulation 5(1)(e), and had subsequently and wrongly treated that nomination as being made by a body within the scope of Regulation 5(1)(c). However, Judge Peter Lane found that, on review, the finding of Ms Sophie Linton (the Officer who undertook the review for the London Borough of Lambeth) was that CAMRA South West London Branch was, and had at all material times been, a body falling within Regulation 5(1)(c). Judge Peter Lane considered that Ms Linton’s approach was entirely permitted by the legislation.

2.25 In considering this matter, neither the SAM nor I have purported to waive the requirements of Regulation 4 or Regulation 5.

2.26 As stated in paragraph 2.10 above, I have found that the application was submitted by the Company, a body falling within Regulation 5(1)(e). It is not being suggested that the application has subsequently been, or should be, treated as having been submitted by the Branch. On that basis, the circumstances referred to by Judge Peter Lane do not apply in the case of the nomination for The Anchor Inn.

2.27 Paragraph 84 does not, in my view, support the conclusion that, in Hamna, the Tribunal rejected the hybrid approach set out in St Gabriel.

2.28 Paragraph 87

Freeths refer to this paragraph where Judge Peter Lane confirmed that:-

“Insofar as what the Tribunal said in the St Gabriel case conflicts with the law of agency and company law, I accept it must be regarded as wrong.”

I agree that this paragraph correctly sets out the position. However, the comment was made in the context of submissions from Mr Elvin and Mr Adamyk that CAMRA South West London did not have authority to make the nomination on behalf of the Company. In the case of The Anchor Inn nomination, the Branch had express and full

authority to act on behalf of the Company in making the nomination (as evidenced by the Statement in Support from Ms Grima, the Company's Campaigns Officer). As such, I do not see that there can be an agency or company law argument against what the Company and Branch did in the case of The Anchor Inn nomination.

2.29 Paragraph 87 does not, in my view, support the conclusion that, in *Hamna*, the Tribunal rejected the hybrid approach set out in *St Gabriel*.

2.30 I conclude that *St Gabriel* was not wrongly decided, and that I am entitled to take account of the decision in *St Gabriel* in undertaking this review. Organisations such as CAMRA can be treated in a hybrid way so that the Company can rely on the Branch's activities to establish the required "local connection" under Regulation 4 of the Regulations.

2.31 In view of my finding in paragraph 2.30 above, I need to consider whether Regulations 4(1)(a) and 4(1)(b) of the Regulations are satisfied.

2.32 Regulations 4(1)(a) and 4(1)(b) provide as follows:-

"(1) For the purposes of these regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if –

(a) The body's activities are wholly or partially concerned –

(i) with the local authority's area, or

(ii) with a neighbouring authority's area;

(b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partially applied –

(i) for the benefit of the local authority's area, or

(ii) for the benefit of a neighbouring authority's area;"

2.33 The Nomination Form describes the activities "run and funded by the branch within the local authority district." I take the phrase "local authority district" to mean the administrative area of Woking Borough Council. As such, it is clear that the Branch's activities are wholly or partially concerned with Woking Borough Council's area. However, even if not all of the activities are undertaken within the area of Woking Borough Council and neighbouring authorities, some certainly are. By way of example, the co-hosting of a beer festival at Woking Leisure Centre is clearly an activity within the Borough of Woking.

2.34 I find that the requirements of Regulation 4(1)(a) are met in this case.

2.35 The Nomination Form states that the Branch does not distribute any surplus it makes to its members. However, the Nomination Form does not state what happens to any

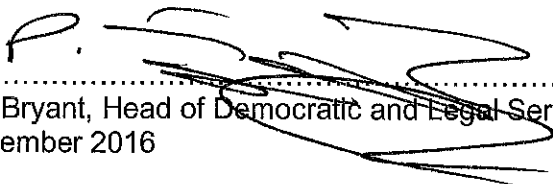
surplus (if, in fact, there is one). Equally, I have not seen any other evidence as to what happens, or would happen, to any surplus.

- 2.36 The effect of Regulation 4(1)(b) is that, in order for there to be a "local connection", any surplus has to be wholly or partially applied (i) for the benefit of Woking Borough Council's area or (ii) for the benefit of a neighbouring authority's area.
- 2.37 I need to determine this review on the basis of the evidence submitted. As I do not know what happens to any surplus made by the Branch, there is no reasonable basis on which I could conclude that the requirements of Regulation 4(1)(b) are met. For the avoidance of doubt, I cannot assume that just because the Branch does not distribute any surplus to its members, it is applied for the benefit of Woking Borough Council's area or the area of a neighbouring authority. It is conceivable that a surplus could be returned to the Company or used for the benefit of another CAMRA branch which does not operate in the Borough of Woking or a neighbouring authority.
- 2.38 I find that the requirements of Regulation 4(1)(b) have not established in this case.
- 2.39 As the requirements of Regulation 4(1)(b) have not been met, it follows that it has not been shown that the Branch's activities constitute the requisite "local connection" for the Company to satisfy the requirements of Section 89(2)(b)(iii) of the 2011 Act. This means that the nomination submitted by the Company is not a "community nomination" (under Section 89(2) of the Act).
- 2.40 Section 89(1)(a) of the 2011 Act provides that land may only be included in a local authority's list of assets of community value in response to a "community nomination". As the nomination submitted by the Company is not a "community nomination", it follows that The Anchor Inn should not have been included in Woking Borough Council's List of Assets of Community Value.
- 2.41 On that basis, it is irrelevant whether the requirements of Section 88 of the 2011 Act are satisfied in the case of The Anchor Inn (these requirements set out the matters to be considered by a local authority in determining whether a building, or land, is land of community value). As such, I have not considered the submissions made on this point, and make no findings in respect of them.
- 2.42 I should also 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' 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

1 December 2016

