

Responding to Assets of Community Value left vacant

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It is well understood that differences in market value have led to many owners of public houses either seeking planning permission to convert to residential use or selling to property developers at a price which includes hope value. In some cases this means the public house closes and is then left boarded up and vacant for some time. It may be an eyesore but the owner's hope is that eventually the required residential planning permission will be granted or if the five year ACV listing period is sat out the pub will come off the list and even if renominated the use as a pub in the past will no longer be regarded by the listing authority as in the recent past. In some cases but not all such a strategy has been successful and the public house has not been relisted.

The strategy is possible because the ACV regime only imposes a moratorium when the owner wants to dispose of the property and there is no right of first refusal let alone an option which can be exercised when the property falls out of use. Community interest groups can not compel a sale or force the owner to negotiate. A stalemate can lead to no use being made of the boarded up public house for a long period which normally will not be good for the local community or the appearance of the locality. It can be an expensive option for the owner but with the prospect of the grant of residential planning permission in the future it can be a cost worth incurring.

Owners who have lost ACV appeals before the First-tier Tribunal may eventually succeed when planning permission is later granted for conversion to use as a dwelling house. Both Mrs King (*King v Chiltern DC*) and Miss Gibson (*Gibson v Babergh DC*) ultimately won through despite losing their respective ACV appeals.

However, it may be that for owners the risks attached to the option of closing and leaving vacant have increased. Until now the owner will have undertaken such a course of action in the expectation that no change in ownership will occur unless and until the owner wants it to. That may no longer be a safe assumption.

Rather than wait for the owner of an ACV listed public houses to give a notice of intention to dispose some community interest groups are urging local authorities to exercise a statutory power of compulsory purchase. There are other less intrusive powers such as section 215 of the Town and Country Planning Act 1990 (“1990 Act”) which allows a local authority to require the proper maintenance of a property and was considered in relation to the Villagers public house in Blackheath. For most community groups the exercise of such a power is not enough. It is acquisition of the closed public house for the community which is the principal objective.

In the past many public houses have been compulsorily purchased by a local authority either alone or together with other neighbouring properties to enable the carrying out of regeneration schemes. Just as examples the Dublin Racket was purchased in 2017 as part of the Chester Northgate Scheme and the compulsory purchase order in respect of the Marlborough Head in Farnham as a part of the Brightwells regeneration scheme was confirmed in 2013 by the Secretary of State but not carried through until 2017.

However, it is not only regeneration schemes which can end with a compulsory purchase order. A public house which has fallen into disrepair may become the subject of the compulsory purchase process. This happened with the Unicorn in Great Rollright which was a listed building and so West Oxfordshire DC could serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and if not complied with contemplate commencing the compulsory purchase process under section 47 of that Act. Similarly the Swan Inn in North Warnborough fell into disrepair. As it was a listed building in January 2015 a repairs notice was served by Hart DC. It was estimated that the essential works required would cost around £400,000. The authority received no response to the notice. This was followed up in March 2015 by the authority commencing the process for a Compulsory Purchase Order with the aim of having in place a credible plan to secure the building’s future possibly by immediately after the acquisition transferring the property to a building preservation trust.

What is new is that local authorities are now beginning to be pressed to use their statutory compulsory purchase powers to acquire ACV listed public houses which are closed and left vacant thereby seeking to pre-empt the moratorium provisions. One of the first is the Tree Inn in Stapleford which was listed as an ACV as a result of the Parish council’s

community nomination in December 2013 around the time that it closed. A planning application to demolish existing extensions and convert to a dwelling was made in 2015 but withdrawn as was a second planning application made in 2016 to demolish and replace by two dwellings. A further application was then made in 2017 for permission to provide two dwellings and a new public house. This was refused and the appeal against refusal was dismissed on 3rd July 2018 by the Inspector, Claire Searson, (APP/W0530/W/17/3188396) who had concerns “whether the proposed new public house would represent a viable and realistic level of service provision which would be sustainable in the longer term for the benefit of the community” (para. 24) and considered that “even with the provision of a new pub, would, on balance, represent a loss of services and facilities in Stapleford” (para. 25).

Whilst these applications were being made the pub remained closed and so a new approach was adopted by the Tree Action Group. It sought to persuade South Cambridgeshire DC to operate the procedure for a compulsory purchase order and in July 2017 the council authorised at the instigation of Tree Community Limited the taking of the first investigatory steps to making a compulsory purchase order in relation to the public house. A factor in the Council’s decision was stated to be the existence of a large and well-organised community group with significant funding behind them.

There is no separate statutory power to compulsorily purchase ACV listed assets or community assets. The local authority has to use one of the range of existing statutory powers available to it and in particular the powers in section 226 of the 1990 Act. With the Tree Inn understandably reliance has been placed by the community group on section 16 of the recently updated Guidance on the Compulsory Purchase Process and the Crichel Down Rules (February 2018) (“the Guidance”) which states that authorities “can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.” Interestingly reference to the 2015 predecessor to this section was made in the House of Commons Briefing Paper (no. 06366) on the ACV regime (11th November 2017). It is line with the exhortation by Planning Minister Greg Clark published as far back as 9th June 2011 to local authorities and community groups to use the compulsory purchase powers “to bring a

valued local asset back to use” (under the heading “More support for voluntary and community groups campaigning to save local assets”).

This new approach has excited interest as the Tree Inn’s history of a closed pub and repeated planning applications for residential use is reflected in the history of many public houses in other towns as appears from the Facebook page for the Golden Lion in Ashton Hays. It was considered by the Blackheath Village Society as an option in relation to the Villagers public house at Blackheath as early as 2014 but Waverley BC would not support it.

However, compulsory purchase is not a simple route by which closed and unused public houses can easily be acquired by the local community. There are a number of significant hurdles to be overcome:

(i) negotiation – first efforts have to be made to acquire the property by negotiation before going down the compulsory purchase route as it is a step of last resort. Often there will have been disputes highlighted in the planning applications as to whether or not the owner and the community group have actually engaged with each other. Usually there will be a significant gap between the market value placed on the closed pub by the owner and the community group. The cost of substantial repairs will be irrelevant if the building is to be demolished to make way for houses but a crucial element in funding if it is to be run as a public house.

(ii) compelling case – compulsory purchase powers cannot automatically be exercised if the property is listed as an ACV. The Guidance provides as it did in previous versions of the guidance that:

“Para 2 Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.”

A proper balance has to be achieved between the public interest and the private rights. Listing as an ACV is not by itself sufficient. There must be a viable scheme with a history justifying the serious step of compulsory purchase. The authority will want to be sure that the community body is not just able to acquire the public house but is able to maintain and run it.

Some of the factors to be taken into account by the local authority in assessing the strength of the case are set out in section 16 of the Guidance which provides that the authority “should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.”

(iii) costs – compulsory purchase will inevitably be more expensive than negotiations during a moratorium period. There are the local authority’s costs for legal and valuation advice and for complying with the formal requirements of the process. The authority must be able to fund these costs and will probably be expecting this burden to ultimately be borne by the community group. Before embarking on the exercise the authority may want to have in place an arrangement which ensures that the burden is not left with it.

On the Crowdfunder page for the Tree Stapleford Community the estimate of potential costs is put at £100,000. This is the combined costs of all parties and is said to be higher than usual because this is the first case. It is a sum which cannot be funded by grants and so has to be raised by the community group. In addition £400,000 has been raised by grants, pledges and loans to fund the purchase and refurbishment of the Tree Inn if this goes ahead.

(iv) formalities – these include matters such as the need to advertise the proposal and obtaining the confirmation of the Secretary of State with the possibility of a public inquiry.

(v) market value – the price to be paid will require the determination of the open market value adjusted by the special assumptions and provisions applicable to the compulsory purchase process. This is not a straightforward process. This price will probably have to be met in full by the community body and the local authority will want to be sure that the price will be met by the community body.

Many are following developments regarding the Tree Inn with great interest. It may be that an agreement can be negotiated without the need for a compulsory purchase order to be made which is the hope with most such processes and the better outcome. If the Tree Inn is purchased by the community then it is to be expected that more requests will be

made to local authorities to instigate the compulsory purchase process. In such cases the local authority will want to be sure that the community body meets the costs and that it will not be left bearing a loss.

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