



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

Notice under Section 91 of the Localism Act 2011 Dated: 5th April 2016

INCLUSION ON THE LIST OF ASSETS OF COMMUNITY VALUE OF LAND USED AS ALLOTMENTS AT BARROW ("THE ASSET")

1. BACKGROUND

On or about the 10th day of February 2016, Ribble Valley Borough Council ("The Council") received a nomination under Section 89 of Localism Act 2011 ("the Act") to list the Asset as an asset of community value.

The nomination was made by Barrow Parish Council.

A copy has been sent to the owners and occupiers of the asset and they have been given an opportunity to make representations.

Under Section 87 of the Act the Council must maintain a list of land in its area that is of community value.

Section 88 of the Act defines land of community value thus:

1. For the purpose of this chapter but subject to regulations under sub-section (3), a building or other land in a Local Authority's area is land of community value if in the opinion of the Local Authority:
 - (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community and
 - (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 same way) the social wellbeing or social interest of the local community;
2. For the purpose of this chapter but subject to regulations under sub-section 3, a building or other land in the Local Authority's area that is not land of community value as a result of sub-section (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 land that was not an ancillary use furthered the social wellbeing or interests of the 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.

Under Section 89 of the Act the Council can only include an asset on the list of assets of community value in response to a community nomination (as defined).

2. DECISION-MAKING PROCESS

The Council resolved at Policy and Finance Committee on the 29th day of January 2013 that the determination of applications for nomination of assets be delegated to the Head of Legal and Democratic Services (inter alia).

In accordance with this decision the Council has now fully considered the nomination and having considered the Act and the Assets of Community Value England Regulations 2012 (the Regulations) and relevant guidance and case law, has decided to enter the property into its lists of assets of community value. This decision has been taken because:

- a. the application meets the criteria in that the assets lies within the administrative boundaries of the Council;
- b. Barrow Parish Council is entitled to make a community nomination in accordance with the provisions of the Act;
- c. the nomination form submitted by Barrow Parish Council includes the matters required under Regulation 6 of the Regulations;
- d. the asset does not fall within the description of land which may not be listed as specified in Schedule 1 of the Regulations;
- e. the nomination form sets out the reasons for nominating the asset, explaining why the asset meets the definition in the Act;
- f. the owners of the asset and those in occupation of the asset have been informed that the Council has been asked to include the land in its list of assets of community value and been given an opportunity to respond; all representations received have been taken into account;
- g. in order for the asset to be listed the Council must be satisfied that the requirements of section 88 are met, the Council is satisfied that this is the case for the following reasons.

The land furthers the social wellbeing or interests of the local community- the benefits of allotment gardening are well recognised, these have been reiterated by the allotment holders, and are not disputed by the landowner. The landowner has made representations about the extent to which the allotment holders, not all of whom live in the village of Barrow, can be part of the local community. Local community is not defined in the Act, the legislation does recognise wider local connections. The Council therefore consider that the use of land is such that it satisfies the requirements of sn 88 1 a or b in terms of the nature of the use.

The Council must also decide whether the use of the asset is current or recent. All the information provided including the copy Notice of termination supports a current use.

The Council is therefore satisfied that the nomination is to be considered by reference to sn 88 1b rather than section 88 2b. No timescale or duration is specified in sn 88 1 b, the Council must be satisfied that it is realistic to think that there can continue to be non ancillary use of the land (see sn 88 above).

In considering how to assess what is realistic the Council has had regard to approach adopted in the case of *Trouth v Shropshire Council and Caynham Village Hall* set in the context of the following factors.

The landowner has made representations about bringing the use to an end, and suggests an alternative use.

The landowner wishes to resume possession of the site in March 2017.

The allotment holders will remain on the site until then and will continue the use as allotments.

Both the landowner and the allotment holders have referred to the connection between the allotment site and the development of the surrounding land.

Throughout the planning application process the landowner's intentions about the allotment site were summarised as follows " the allotments are considered to be a major asset to support the development of the site and this space will be enhanced with improved access and overlooking" .

3. NEXT STEPS

The asset will now be placed on the list of assets of community value which the Council is required to maintain under Section 87 of the Act. In accordance with Section 91 of the Act, the Council will send a copy of this notice to the owner and occupiers of the land and to Barrow Parish Council. The information about how the application has been determined will be published on the Council's website. The asset will remain on the Council's list of assets of community value for a period of 5 years from the date of this notice unless removed with effect from some earlier time in accordance with the provisions of the regulations.

The Localism Act 2011 requires that the Council draws your attention in particular to the following matters:

- a. The consequences for the land and its owner of the land's inclusion in the list.
- b. The right to ask for review.

4. THE CONSEQUENCES FOR THE LAND AND ITS OWNER OF THE LAND'S INCLUSION IN THE LIST

Inclusion of assets on the list of community value is a local land charge under the Local Land Charges Act 1975. The Council is required under Schedule 4 of the Regulations to apply to the Land Registry for a restriction to be added to the registered title of the land that no transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene Section 95(1) of the Localism Act 2011. Under Section 95 of the Act an owner must notify the Council at the address shown below when they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of that asset. Some types of disposal of listed assets are exempt and these are set out in full in Annex A of the Non-Statutory Advice Note issued to local authorities about the community right to bid. Annex A also identifies circumstances where, although there is no requirement in the legislation that the owner has to explain to the Local Authority that the disposal is exempt, it would be helpful for them to do so.

A moratorium period is triggered by notification under Section 95 to allow a community interest group to submit a written request to be treated as a potential bidder for the asset.

Please note the owner of the asset does not have to sell the asset to the community interest group. There is also a "protected period" (18 months from the time that the owner notified the Local Authority of their intention to dispose of the assets) and during this time there can be no further moratoriums on sale and the owner is free to dispose of the property as they see fit.

The owner is advised to refer to Part 5, Chapter 3 of the Act and the regulations in full and to seek legal advice if they wish to dispose of the asset. A disposal of listed land which contravenes the Regulations and Act will be ineffective.

5. THE RIGHT TO ASK FOR A REVIEW (SECTION 92)

Asset owners have the opportunity to request a review of the decision to enter an asset on the list of assets of community value. The request must be made in writing before the end of the period of eight week beginning with the day on which written notice of inclusion of the land in the list was given by the Council. The internal review process in relation to the listing will be undertaken by the Chief Executive or the Head of Legal and Democratic Services where they have not been involved in the initial decision.

Landowners wishing to request a review of the decision should address their request to the Head of Legal and Democratic within the timescale set out above setting out the grounds for review and whether or not they wish to request an oral hearing.

Private owners may claim compensation for loss and expense incurred through the asset being listed including a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. Regulation 14 is the regulation that contains details about applications for compensation, which must be made before the end of thirteen weeks after the loss or expense was incurred. Part 5, Chapter 3 of the Act and the Regulations referred to above provide further detailed information.

Signed:
Head of Legal and Democratic Services

Dated:
5th April 2016

**ASSETS OF COMMUNITY VALUE
THE COMMUNITY RIGHT TO BID**

NOMINATION FORM

Before completing this form, please read the material at:

<http://mycommunityrights.org.uk/community-right-to-bid/>

When completed the form should be sent to the local authority that covers the area in which the asset is located.

Section 1: The name of your organisation

Name of organisation <i>(full name as written in your constitution or rules (if appropriate))</i> : BARROW PARISH COUNCIL
Address including postcode: KEMPLE VIEW, PENDLETON ROAD, WISWELL, CLITHEROE, LANCASHIRE, BB7 9BZ

Section 2: Contact details

Name: MRS VICTORIA WILSON
Position in the organisation: CLERK TO THE PARISH COUNCIL
Address including postcode: KEMPLE VIEW, PENDLETON ROAD, WISWELL, CLITHEROE, LANCASHIRE, BB7 9BZ
Daytime telephone No: 07582 670562
Mobile telephone No: 07582 670562
Email address: barrowparishcouncil@gmail.com
How and when best to contact you <i>(by email or phone, and days of the week and / or times your prefer)</i> : EMAIL OR POST

Section 3: Type of organisation

Description	Indicate all that apply	Registration number of charity and / or company if applicable
Neighbourhood forum		
Parish council	✓	
Charity		
Community interest company		
Unincorporated body		
Company limited by guarantee		
Industrial and provident society		

Section 4: Number of members registered to vote locally (unincorporated bodies only)

In the case of an unincorporated body, at least 21 members must be registered to vote locally. If they are registered to vote in the area of a neighbouring local authority, please confirm what this area is.

N/A

Section 5: Local connection

In addition, your organisation must have a local connection, which means that its activities are wholly or partly concerned with the administrative area in which the nominated asset is located. Please explain what your organisation's local connection is.

THE ALLOTMENTS ARE LOCATED WITHIN THE PARISH OF BARROW, WHICH IS REPRESENTED BY BARROW PARISH COUNCIL.

Section 6: About the land or buildings(s) you are nominating

What it is (e.g. public, local shop, recreation land):

ALLOTMENTS

Name of the premises (The Volunteer Pub, Jones stores):

BARROW ALLOTMENTS ASSOCIATION

Address including postcode (if know):

LAND TO THE WEST OF WHALLEY ROAD, BARROW, LANCASHIRE

Section 7: Details of the land

Please include details of the boundaries of the land you are nominating.

SEE ATTACHED SHEET

You should supply the following information, if possible. If any information is not known to you, please say so.

	Name (s)	Address (es)
Names of all current occupants of the land	VARIOUS ALLOTMENT HOLDERS	NOT KNOWN
Name of current and last known addresses of all those owning freehold of the land	THE BARROWLANDS COMPANY LTD	1 KINGSLAND PASSAGE LONDON E8 2BB
Names of current or last known addresses of all those having a leasehold interest in the land	VARIOUS ALLOTMENT HOLDERS C/O MR D P MARUM	NOT KNOWN 34 CHATBURN ROAD CLITHEROE LANCASHIRE BB7 2AP

Section 8: Why you think the building or land has community value?

Note that the following are not able to be assets of community value:-

- A building wholly used as a residence, together with land "connected with" that residence. This means adjoining land in the same ownership. Land is treated as adjoining if it is separated only by a road, railway, river or canal.
- A caravan site.
- Operational land. This is generally land belonging to the former utilities and other statutory operators.

Does it currently further the social wellbeing or social interests* of the local community, or has it done so in the recent past and if so how?

*These could be cultural, recreational and/or sporting interests, so please say which one(s) apply.

SEE ATTACHED SHEET

Could it in future further the social wellbeing or social interests* of the local community? If so, how? (This could be different from its current or past use.)

*These could be cultural, recreational and/or sporting interests, so please say which one(s) apply.

SEE ATTACHED SHEET

Section 9: Submitting this nomination

What to include

- Evidence that the nominator is eligible to make a community nomination (The rules of your organisation / constitution)
- Names & Addresses of 21 Members who are registered to vote in the local community if the organisation is an unincorporated body

Signature

V Wilson

AS CLERK TO
BARROW PARISH
COUNCIL

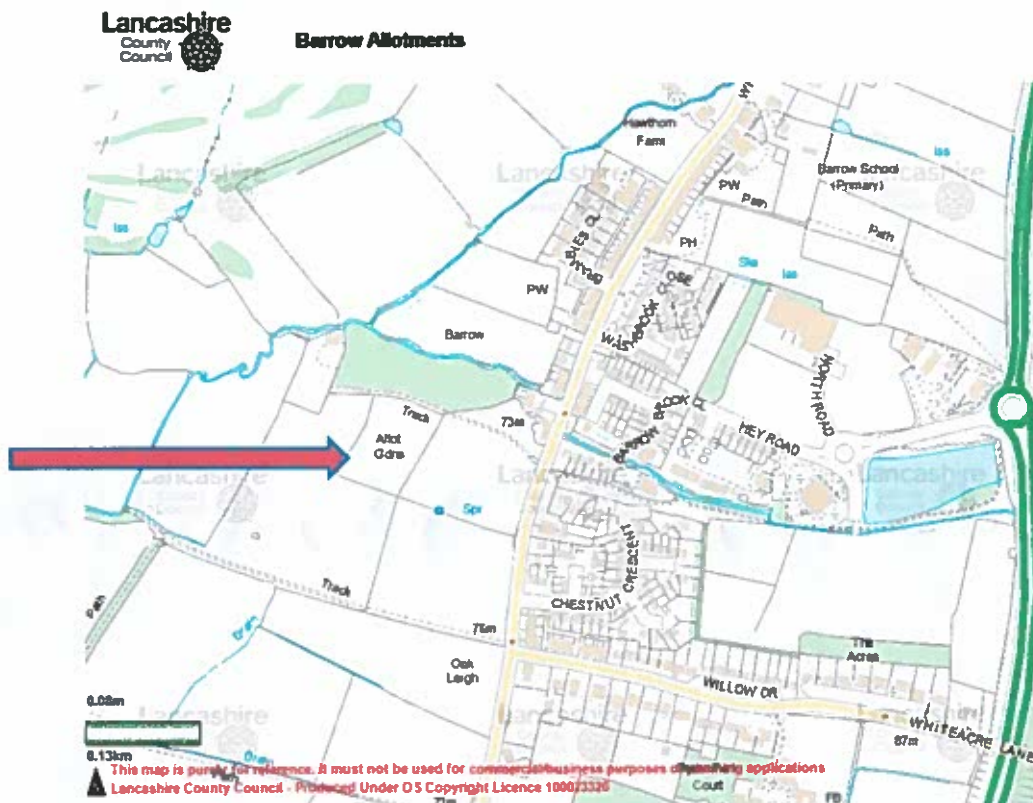
By signing your name here (if submitting by post) or typing it (if submitting by email) you are confirming that the contents of this form are correct, to the best of your knowledge.

Barrow Allotment Association – Application by Barrow Parish Council to nominate the site as an asset of community value

Section 7: Details of the land

Include details of boundaries of land

The allotments are located in the field to the west of Whalley Road in Barrow, as shown on the map below. Planning permission has been granted for a new housing estate of 504 dwellings on the adjoining agricultural fields.



Barrow Allotment Association – Application by Barrow Parish Council to nominate the site as an asset of community value

Section 8: Why do you think the building or land has community value?

Does it currently further the social wellbeing or social interests of the local community, or has it done so in the past and if so, how?

The Barrow Allotments Association has been providing allotments for local residents over 75 years. There are currently 70 allotments, leased by 34 members.

The site is owned by The Barrowlands Company Ltd, a property development company which has been granted planning permission to build 504 dwellings on agricultural land next to the allotments. There are concerns amongst the community that the allotment site might also be considered for development in the future.

Whilst Barrow is currently undergoing a significant growth in housing numbers, it is lacking in local amenities and does not have an obvious focal point. The allotment site is a valuable community asset, promoting the environment, sustainability, biodiversity and social inclusion, in line with government thinking.

Allotment gardening has many benefits, as follows:

- Gardeners lead a healthy, active, outdoor lifestyle well into retirement.
- Gardening has been shown to improve mental as well as physical well-being.
- Allotment gardeners grow fruit and vegetables, leading to a more healthy diet. By growing food locally, the carbon footprint, packaging and wastage are all reduced.
- Allotment gardening gives consideration to the environment, providing habitats for wildlife.
- The trees and plants grown absorb carbon dioxide and cultivated land helps reduce flooding.
- The allotments provide a 'green lung,' improving air quality on a site which will soon be surrounded by a housing development.
- Allotment gardening promotes social inclusion having tenants from all walks of life, all working alongside each with a sense of purpose and achievement.

The Parish Council wants to ensure these benefits continue in Barrow for many years to come.

Could it in future further the social wellbeing or social interests of the local community? If so, how?

The local community has requested that the site remains intact and in doing so, it will preserve the allotments for future generations. The allotments are a fantastic asset to the community and the Parish Council hopes that by nominating the site as an asset of community value, they will continue to provide recreational benefits and be protected from housing development.



Gary Hoerty Associates

RECEIVED BY
CHIEF EXECUTIVE

14 March 2016

Our Ref: Bar/626/2073/GH

15 MAR 2016

Suite 9
Grindleton Business Centre
The Spinney
Grindleton
Clitheroe
Lancashire
BB7 4DHMrs D Rice
Head of Legal and Democratic Services
Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe
Lancashire
BB7 2RATel: 01200 449700
www.ghaonline.co.uk
email: info@ghaonline.co.uk

Dear Ms Rice

**Re: Our Clients – New Barrow Limited. Land at Barrow Lancashire
used as allotments by the Barrow Allotment Holders Association.**

Thank you for your letter dated 16 February 2016 which arrived on 22 February 2016.

I represent New Barrow Limited, the registered freeholder of this land. My clients object to the proposed inclusion of their land in the Council's list of Assets of Community Value for the following reasons:

1. All the surrounding land has consent for housing development and negotiations with a prospective purchaser are well advanced. Access to the 70 allotments is across the development site and it would be extremely dangerous to allow that to persist during the construction period of several years.

2. It will probably be necessary to run sewer and other services across the area currently used for allotments.

3. For these reasons my clients could have given 3 months' notice of termination under clause 7(i) of **the attached licence**, whereas for the allotment holders' convenience my clients have in fact given 12 months' notice to expire on 15 March 2017 (**attached**).

4. The use as allotments will therefore cease permanently in 12 months' time, when my clients intend to plant a permanent crop of Christmas trees on the land. There is consequently no reasonable possibility that the use can continue or may revert to allotments within five years and therefore the land will not be used in a way that will further the social well-being or social interests of the local community in the future. As such, the Nomination does not satisfy part (B) of Section 88(1) or Section 88 (2) of the 2011 Localism Act. A Nomination is required to satisfy parts A and B of 88(1) or (2) in order to be designated.



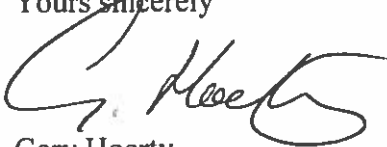
Chartered Surveyors ■■■ Planning & Development ■■■ Land Agents
Valuers ■■■ Property Agency ■■■ Property Management



5. My clients have suggested to the Association that, if they would like to find suitable alternative accommodation, my clients may be able to assist with the acquisition.

6. My clients understand that a significant number of the 68 occupied allotments are used by people not resident in the parish nor members of the Community.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Hoerty', written over a faint, illegible typed name.

Gary Hoerty

Encl' Allotment Licence

Mr D P Marum
Barrow Allotment Holders' Association
34 Chatburn Road
Clitheroe
Lancashire
BB7 2AP

10 March 2016

TERMINATION NOTICE

Dear Mr Marum

From: New Barrow Limited (Company Registration Number: 06982401) whose registered office is at 1 Kingsland Passage, London, E8 2BB (the "Company")

To: Mr D P Marum of 34 Chatburn Road, Clitheroe, Lancashire, BB7 2AP on behalf of the Barrow Allotment Holders' Association (the "Association")

Agreement dated 1 March 1977 between (1) Tootal Limited (2) Albert Haworth and Allan Fisher acting on behalf of the Association (the "Agreement")


Land edged red on the plan annexed to the Agreement being Allotments in Barrow, Lancashire (the "Property")

The Company is the registered freehold owner of the Property.

In accordance with clause 7 of the Agreement, the Company hereby GIVES YOU NOTICE that the Company is terminating the Agreement and that the Agreement will terminate on 15 March 2017.

The Company reserves its right to terminate the Agreement on shorter notice under clauses 7(i) or 7(ii) of the Agreement.

Yours faithfully


.....
Director, for and on behalf of
New Barrow Limited

DAVID LEWIS

THIS AGREEMENT is made the first day of March 1977 between TOOTAL LIMITED of 56 Oxford Street, Manchester ('the Company') and ALBERT HAWORTH of 1 Ormerod Terrace, Barrow, Nr. Blackburn, and ALLAN FISHER of 'Gleneagles', Clitheroe Road, Whalley, Nr. Blackburn, acting on behalf of BARROW ALLOTMENT HOLDERS' ASSOCIATION ('the Association').

1. The Company agrees to let and the Association agrees to take all that plot of land approximately 1.96 acres in area situate at Barrow Clitheroe Lancashire shown edged red on the plan annexed hereto ('the Allotment').
2. The Allotment shall be held by the Association for the members for the time being of the said Association to use as Allotment gardens from the first day of April 1977 at a yearly rent of fifty pounds (£50) payable in advance on the first day of April in every year.
3. The Association shall also pay all rates taxes and other outgoings payable in respect of the Allotment.
4. The Company shall have the right, not more than once in any period of three years, to review the rent payable under this Agreement. Such rent shall be an amount as agreed between the parties (being not less than the amount payable at the time of such review) or failing agreement as determined by an Arbitrator appointed by agreement between the parties or failing such agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors.
5. The Company also agrees to grant to the Association during the term of this Agreement:
 - (a) a right to lay, use and maintain a water pipe not exceeding in diameter in the position indicated by a broken blue line between the points marked A and B on the said plan as shall be needed for reasonable user of the Allotment, and for no other purpose, together with the right to inspect, repair, cleanse and replace the said pipe or any part thereof doing as little damage as possible and making good any damage done, and
 - (b) a right of way (in common with others entitled to the same) along the roadway shown coloured brown on the said plan with or without the vehicles for the purpose of gaining access to the Allotment.
6. The Association shall (and ensure that all members for the time being of the Association shall) observe the obligations set out in the Schedule hereto.
7. This Agreement may be terminated by either party giving to the other not less than twelve months' notice in writing to expire on or before the fifteenth day of March or on or after the fifteenth day of October in any year.

PROVIDED THAT the Company may terminate this Agreement:

- (i) by re-entry after three months' notice in writing on account of the Allotment being required by it for building, mining or other industrial purpose, (including in particular residential development) or for roads or sewers necessary in connection with those purposes; or
- (ii) by re-entry forthwith on non-payment of rent for fourteen days after the same shall be due (whether formally demanded or not) or if the Association shall be in breach of any condition of this Agreement.

SCHEDULE

Associations' Obligations

1. At its own expense to lay and thereafter maintain the said pipe in a position and manner satisfactory to the Company.
2. In case of accident to the said pipe to give notice thereof forthwith to the Company and to effect all necessary repairs without delay.
3. To obtain all necessary consents and to comply with all necessary statutory requirements in connection with the exercise of its rights and obligations under this Agreement.
4. On completion of the work of laying and maintaining the said pipe to leave the ground in a clean and tidy condition to the satisfaction of the Company.
5. From time to time when called upon by the Company to contribute such proportion towards the cost of maintenance of the said roadway as the Company shall consider to be fair and reasonable.
6. Not to obstruct any paths and in particular not to park vehicles on the said roadway other than for the purpose of loading and unloading.
7. Not to cause or permit any nuisance or annoyance on the Allotment.
8. To keep the Allotment well cultivated and free from weeds and in a clean and tidy condition.
9. To keep the Allotment well fenced to the satisfaction of the Company and to keep all hedges properly cut and trimmed.
10. Not to keep any animal on the Allotment.
11. Not to underlet, assign or part with possession of the Allotment or any part of it except to bona fide members of the Association.
12. Not to erect any building on the Allotment without the prior written consent of the Company.
13. Not to carry on any trade or business of any kind whatsoever on the Allotment.
14. To indemnify the Company against all claims and liabilities which may arise in consequence of the exercise of the rights granted under this Agreement or the failure to observe any of the obligations imposed.

SIGNED BY *W. J. ...*
.....
for TOTAL LIMITED

Secretary

SIGNED BY *A. Haworth*
.....
A. Fisher
.....

THE BARRON ALLOTMENT HOLDERS' ASSOCIATION



IAC-AH-CJ/SC-V1

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Appeal Reference: **CR/2016/0014**

**Heard at Blackburn Magistrates' Court
On 1 February 2017**

Before

JUDGE PETER LANE

Between

NEW BARROW LTD

Appellant

and

RIBBLE VALLEY BOROUGH COUNCIL

First Respondent

BARROW PARISH COUNCIL

Second Respondent

Representation:

For the Appellant: Mr James Corbet Burcher, Counsel, instructed by Daniel Watney LLP

For the Respondent: Mr Anthony Gill, Counsel, instructed by Ms Mair Hill, Ribble Valley Borough Council

DECISION AND REASONS

Introduction

1. In February 2016, Ribble Valley Borough Council ("the Council") received a nomination from Barrow Parish Council under section 89 of the Localism Act 2011 to

list land as an asset of community value for the purposes of Chapter 3 of Part 5 of that Act. The land in question was at that time in use as allotments, cultivated by members of the Barrow Allotment Holders' Association, which held the land under a licence from the appellant, New Barrow Ltd. The land is situated to the west of the village of Barrow. Access to it is by means of a trackway, over which there is no public right of way, leading off Whalley Road.

2. The Council concluded that the land fell to be listed by reason of section 88(1) of the 2011 Act:-

“(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in the local authority’s area is land of community value if in the opinion of the authority –

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(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.”

3. Following a review under section 92, requested by the appellant, the Council decided on 21 July 2016 to continue to include the land in the list held by the Council pursuant to its duty under section 87. The appellant appealed to the Tribunal against the decision on the review and a hearing of the appeal took place at Blackburn Magistrates’ Court on 1 February 2017.

4. The listed land is entirely surrounded by a much larger area of land, also in the appellant’s ownership. Following a public inquiry, the Secretary of State for Communities and Local Government on 20 February 2014 granted outline planning permission in respect of the larger area (which I shall call the development land) for the construction of 504 dwellings and associated development. The appellant and Redrow Homes Ltd (which will undertake the development of the development land) are in the process of preparing a “reserved matters” application to the Council, as local planning authority.

5. On 10 March 2016, Barrow Allotment Holders’ Association was served by the appellant with a termination notice, in accordance with the terms of the licence of 1 March 1977, requiring the Association to vacate the allotment land by 15 March 2017. On 1 February 2017, the appellant and Redrow Homes Ltd entered into a “licence to occupy” the listed allotment land. Under the terms of this licence, Redrow are entitled to occupy the land as licensees from 16 March to 15 June 2017, on a “peppercorn” basis, and then from 16 June 2017 to the termination date, for a sum of £6,000 per annum. The “termination date” is the earliest of (a) 15 March 2022; (b) Redrow failing within a reasonable time to rectify a breach of its obligations or undertakings under the licence; and (c) the expiry of not less than one month’s notice

given by the appellant to Redrow on or after 16 March 2019 or by Redrow to the appellant on or after 16 March 2017.

The appeal hearing

6. At the appeal hearing, I heard oral evidence from Mr Gary Hoerty, of Gary Hoerty Associates, the appellant's Land Agent. Mr Hoerty spoke to the licence which he had that day signed on behalf of the appellant, and also to other materials which the appellant had served, in addition to those contained in the Tribunal bundle. No objection was taken by the respondent to me considering these materials for the purposes of determining the appeal.
7. As is by now well-known in appeals of this kind, the Tribunal makes its own assessment of whether the listed land satisfies the statutory requirements for listing. In this regard, the Tribunal may (subject to matters of procedural fairness) consider the evidential position as at the date of hearing (or other determination), whether or not such evidence was in existence at the date of the review under section 92.
8. Speaking to the appellant's reason for terminating the allotment licence, Mr Hoerty said that, during construction on the development land, it would not be appropriate to allow access from Whalley Road to the allotment land. This was due to concerns regarding health and safety, whilst construction work was taking place on the development land. There would need to be gates at the junction of the trackway and Whalley Road, with the trackway being used for delivery vehicles, wagons and other transport connected with the development.
9. Mr Hoerty said a period of six to seven years was envisaged for the completion of the development. The decision had been taken to use the listed land as a site compound. As envisaged in the licence, it was likely that the topsoil of the listed land would need to be stripped off, before laying a stone surface over a "terram"-type membrane, which would protect the stone surface from the land below. The listed land would be surrounded by a "heras" type security fence, or similar.
10. A plan of the listed land showed large areas designated for, respectively, a compound, car park and materials store. Mr Hoerty said that it was cost-effective for Redrow to use the listed land as a depot, rather than having to move such a facility around the overall development land, as construction of the residential units progressed.
11. The final document submitted by the appellant after compilation of the bundle is a "pre-application enquiry response" from the Council, as local planning authority. This is dated 23 November 2016 and relates to the listed land. The pre-application advice officer noted that the appellant proposed to create new allotments in a triangular portion of land, to the southwest of the development land, and to seek

permission to construct dwellings on the listed land. Although the officer had concerns about the effect of the allotments on a Biological Heritage Site, she said:–

“I understand that the units erected upon the existing allotment site would be part of the already permitted units on the wider site and not additional units. On this basis alone, the principle of dwellings on the site as part of the approved scheme is considered acceptable subject to compliance with other material considerations such as design, appearance, landscape impact etc.”

12. The response concluded with the following:–

“The above observations have been provided on the basis of the level of information submitted and the comments contained within this response represent officer opinion only, at the time of writing, without prejudice to the final determination of any application submitted.”

13. Under cross-examination, Mr Hoerty said that, even without the listed land being developed for housing, it was unlikely that the limit of 504 dwellings would be reached on the development land. In fact, only some 420 to 440 dwellings would be likely to be constructed on the development land.
14. In re-examination, Mr Hoerty said that the area in respect of the forthcoming “reserved matters” application would yield some 185 houses; and the land to the south would yield 250, making a total of 435. This would leave a shortfall of 69 dwellings; but Mr Hoerty’s opinion was that a maximum of only 24 dwellings could be built on the listed land.
15. Mr Hoerty opined there was no risk that any contamination of the listed land, during its use as a depot etc. facility, would render its later residential development unfeasible. The licence required Redrow to remediate the site. Mr Hoerty’s professional experience led him to consider it was very unlikely that planning permission for the residential development of the listed land would be refused.
16. As for the pre-application advice officer’s concerns regarding the potentially adverse effect of the new allotment site, Mr Hoerty said he believed the presence of sheds and greenhouses was an issue but he did not consider this, in effect, to be a serious problem.

Discussion

17. As Mr Gill rightly was at pains to stress, the question of whether the requirement in section 88(1)(b) is satisfied in a particular case calls for a fact-sensitive analysis. No two cases are likely to have exactly the same factual matrix. The Tribunal’s task is to look at all relevant matters in the round, in order to conclude whether “it is realistic to think that there continue to be” use of the land (whether or not in the same way) that will further social wellbeing or social interests of the local community.

18. Mr Gill was also correct to point out that, unlike the requirement in section 88(2)(b), there is not any express five year (or, indeed, any other) time limit in section 88(1)(b). In this regard, Mr Gill criticised the appellant's earlier concentration upon the next five years after the termination of the Association's licence, as imposing an impermissible restriction or gloss upon the language of the statute. He also expressed scepticism at the provisions in the licence of 1 February 2017, where the latest date upon which the licence must end is 15 March 2022, which happens to be five years after its start date.
19. As matters stood at the time of nomination and, moreover, at the time of review, the Council was in my view entitled to conclude that the requirements of section 88(1)(b) were met. The actual current use of the land was as allotments. There is no question but that such a use satisfies the test of furthering social wellbeing or social interests of the local community. The fact that the appellant had served the Association with notice of termination in March 2016 did not of itself at that time render the continuation of the allotment use unrealistic. In this regard, the Council was entitled to note that, at the public inquiry, positive statements have been made on behalf of the appellant about the contribution being made by the allotments. Subsequently, there had been a suggestion from the appellant that the listed land might be used to grow Christmas trees. In short, a number of realistic possibilities co-existed during 2016.
20. I have, however, come to the firm conclusion that, as at February 2017, the requirement of section 88(1)(b) is not met. Even if one can still say that the "actual current use" of the listed land is as allotments, the future position has materially changed.
21. Although section 88(1)(b) contains no restriction on looking ahead further than five years, in deciding whether a relevant use can continue, regard must be had to section 87(3). This provides as follows:-
 - "(3) Where land is included in the local authority's list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5))."
22. It follows from this that it is difficult to see how section 88(1)(b) could be successfully invoked where, on the facts of a case, an existing use will cease for a period of five years, even if it is very likely that the use would then resume after that period. The effect of the legislation is to impose a finite restriction, in terms of the moratorium period, upon an owner's ability to dispose of land that is serving a relevant community purpose.
23. I found Mr Hoerty to be a credible witness. His oral evidence illuminated aspects of the appellant's case. I see no reason to reject his estimate of the time it will take to

undertake development of the development land. Although whilst the licence between Redrow and the appellant remained unsigned, there might have been grounds for scepticism regarding Redrow's intention to use the listed land during the course of that development, any such grounds disappeared on 1 February 2017.

24. There is manifest strength in Mr Hoerty's evidence that it is more cost-effective to have a depot facility on a single site, rather than having to move it around as phases of the site are completed.
25. It is also entirely understandable that the appellant takes the view that continued use of the allotments by members of the Association (or anyone else) during the development is likely to cause significant problems, given that construction traffic will be making use of the trackway.
26. I therefore find that, on the particular facts of this case, the impending use of the listed land by Redrow is highly likely to last for five years and that, given the overall scheme of the 2011 Act, it is not realistic to think that use of the listed land as allotments could "continue", as required by section 88(1)(b), whether or not it is realistic to think that allotment use might return to the land afterwards.
27. In any event, I find that no such resumption of allotment use is at all realistic. Although I agree with Mr Gill that one must not elevate the significance of the pre-application enquiry response so as to turn it into something that it is not, on the particular facts of this case the officer's response cannot be disregarded. The listed land lies entirely within the boundaries of the development land. I accept the evidence of Mr Hoerty that the limit of 504 dwellings would not be breached by residential development of the listed land. One does not need to be a qualified planner to see the incongruity of leaving the listed land out of the overall residential development proposals. Notwithstanding the provisions in the licence for restoration of the land by Redrow, there is such a strong likelihood of the listed land never reverting to allotments as to make the contrary proposition entirely unrealistic. Mr Hoerty's professional experience is such that weight should, I find, be given to his conclusion that the pre-application advice officer's concerns about the creation of new allotments to the southwest will not turn out to be a stumbling block to the creation of such a facility in the future. This prospect is, I consider, such as to render any re-establishment of allotments on the listed land (at best) highly unrealistic.

Decision

26. This appeal is allowed.

Judge Peter Lane
2 March 2017

DECISION ON APPLICATION BY THE COUNCIL FOR COSTS

1. The Council applies pursuant to rule 10(1)(b), (3) and (4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 for an order for costs against the appellant. The application is said to be made “on the narrow basis of unreasonable behaviour on the appellant’s part in insisting upon the holding of a live hearing for the determination of the appeal”.
2. In essence, the Council contends that it was unreasonable of the appellant to insist upon an oral hearing rather than, as it had throughout proposed, a decision “on the papers”, without an oral hearing. The Council says that the evidence which Mr Hoerty gave at the hearing could have been the subject of a written statement (insofar as the matters covered by him were not already contained within the documentary materials).
3. The appellant opposes the application, stressing the relevance of the oral evidence given by Mr Hoerty at the hearing.
4. I agree with the Council that the decision to call Mr Hoerty to give evidence came only as a result of a matter raised by the Tribunal at the hearing. The fact is, however, that the questioning of Mr Hoerty, not only by the Tribunal but by both Counsel, served to illuminate aspects of appeal, as I have indicated in my substantive decision. I do not consider that there was any procedural unfairness to the Council. Indeed, Mr Gill did not contend that there was; and the costs submissions, likewise, contain no such assertion.
5. In all the circumstances, I consider I was, in the event, materially assisted by the fact that an oral hearing took place. That assistance came not only as a result of Mr Hoerty being examined and cross-examined but also from the submissions of Counsel, which took account of the totality of the evidence, as it then stood. It is not possible, in my view, to assume, with the benefit of hindsight, that the matters dealt with by Mr Hoerty and Counsel at the hearing could have been adequately addressed in prior written form.
6. In all the circumstances, I decline to make an order for costs.

Judge Peter Lane
2 March 2017



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7 March 2017

CR/2016/0014; New Barrow Limited vs Ribble Valley Borough Council and Barrow Parish Council

Dear Parties

I attach a copy of the Tribunal's decision. This decision may be posted on the tribunal's public web site in due course. Subject to the information below, this decision is final and binding on all parties. It is not possible to re-hear the case.

DECISION NOTES

Corrections

If the decision contains a clerical mistake or other accidental slip or omission (for example, the Tribunal may have written "2015" when it intended to say "2016"), this can be corrected.

Error of Law

A party may apply to **this** Tribunal (i.e. the First-tier Tribunal) for permission appeal to the Upper Tribunal on a point of law that arises from the decision.

An application for permission to appeal must

- Be sent to these offices,
- Be in writing,
- Identify the alleged error of law in the decision and
- State what result the party expects.

The time limit for applying to set aside a decision or for permission to appeal is 28 days after the Tribunal sends the decision. An application made outside this time limit must include a request for an extension of time **and** the reason why it was not provided in time. The Tribunal will then consider whether the application should be admitted.

The form for making an Application for Permission to Appeal to the Upper Tribunal can be found on our website at

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=General%20Regulatory%20Chamber

If you do not have access to the internet, please let us know and we will send you a form on which to apply for permission to appeal.¹

Yours faithfully,

Pinki Pancholi
Admin Officer
General Regulatory Chamber
0116 249 4134

¹ In certain circumstances, you may wish to apply in writing within 28 days of being sent the decision for the decision to be set aside. This will be appropriate ONLY where there has been some procedural irregularity in the proceedings, such as if you were not sent a notice of hearing and the Tribunal proceeded to hear the case in your absence. For further information, see rule 41 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.