

COMMUNITY RIGHT TO BID

REVIEW DECISION NOTICE

(Section 92 Localism Act 2011)

To:

Applicant for the Review

London Colney Village Club (Property Holding) Limited

Nominating Group London Colney Parish Council

Other owners

Best Friends Childcare Centre

A request was made for a review of the decision to include land in the List of Assets of Community value on 4th February 2020 under section 92 of the Localism Act 2011 for the determination of whether the listed land should continue to be included in the Council's list of Assets of Community Value.

The Land in question is the land situated at and known as

London Colney Village Club, St Anne's Road, London Colney AL2 1NX

Land Registry No. HD447485 & HD457912

The Council hereby gives Notice in accordance with section 92 of the Localism Act 2011 that following a review the land in question will continue to be included in the list of Assets of Community Value

The **reason(s)** for the decision to include this in the list are as follows:

1. Review Decision

- 1.1 I have been requested to conduct a written review into the listing of the London Colney Village Club, St Anne's Road, London Colney AL2 1NX as an Asset of Community Value. The Club was listed by St Albans City and District Council ("the Council") under a notice dated 9 January 2020. By a letter dated 4 February 2020 the Owner (London Colney Village Club (Property Holding) Limited) requested a review of the Council's decision pursuant to s92(1) of the Localism Act 2011. The Owner confirmed on 10 March 2020 that it did not wish to proceed by way of an oral hearing.

2. Background

- 2.1 I have received the following papers as part of my review of the Council's decision:

Legislation and policy documents

1. Extract of Localism Act 2011, Part 5, Chapter 3 ("the Act")
2. The Asset of Community Value (England) Regulations 2012 ("the Regulations")
3. St Albans City & District Council Guide to Assets of Community Value
4. St Albans City & District Council Procedure for Reviews
5. St Albans City & District Council Review Hearing Procedure

Nomination material submitted by London Colney Parish Council

6. Nomination form dated 23 April 2019
7. Nomination site plan

Site inspection and listing decision

8. Site inspection form – inspection on 21 August 2019
9. Site inspection photographs– inspection on 21 August 2019
10. Decision Notice dated 9 January 2020

Evidence submitted on behalf of the Owner of London Colney Village Club (freeholder)

11. Letter from owner's representative requesting review of listing decision dated 4 February 2020
12. Representations of the owner on review of listing decision
13. Letter from owner's representative to Council regarding development agreement dated 17 July 2019

Evidence of Council's decision maker

14. Email from Lyn Henny, Regeneration and Investment Manager, confirming representations on behalf of decision maker dated 15 May 2020
15. Email from Judith Adamson, Regulatory Solicitor, to owner's representative dated 19 February 2020

Evidence of London Colney Parish Council

16. Email from London Colney Parish Clerk confirming no representations dated 12 May 2020

Case law referred to in statements

Owner's representations:

17. *Crendain Developments Limited v Ealing Council* [CR/2017/0009]

18. *Cullimore v Lyme Regis Corporation* [1962] 1 Q.B. 718

Council's representations:

Crendain Developments Limited v Ealing Council [CR/2017/0009]

[Document 17]

Supplemental material of London Colney Parish Council

19. Letter from London Colney Parish Council to Cllr White dated 26 June 2020

- 2.2 I am delegated in consultation with Council's Leader, Cllr Chris White, under the Council's Constitution to consider and determine requests for reviews of Council decisions to list land as an Asset of Community Value.
- 2.3 The London Colney Village Club has been entered into the lists of Assets of Community Value maintained by the Council. The reasons given by the Council for the decision to list are as follows:

The primary use of the land, now or in the recent past, furthers or has furthered the local community's social wellbeing or interest for the reasons set out below.

The land comprises a community building, car park and a separate nursery school.

The nursery is operated Monday to Friday all year and is for the ages 3 months to 5 years. The building consists of a kitchen, children's toilets, baby and toddler area, outside area, kitchen & office. The building is well maintained and there are 24 attendees at the nursery school at present.

The primary use of the nursery furthers the local community's social wellbeing by providing a local service which benefits the children and parents of the community. The nursery provides a social and educational service and appears to be a successful run establishment, serving a wide range of ages. The nursery

operates all year round which indicates the nursery is well used and perhaps relied upon by the community.

Although there are concerns regarding the future of the nursery school due to the status of the lease, it is realistic to think that the site can continue to further the social wellbeing of the community. The lease of the nursery school is being negotiated. Although future use of the land is not guaranteed, there are other possible uses of the site which would benefit the social wellbeing or interests of the community.

It was not possible to carry out a full inspection of the community building, however an external inspection was carried out. The building comprises a main bar/function room, a smaller bar area with rooms off, an accessible toilet and a stage. In the main entrance there is a notice board with few notices and there is a trophy cabinet containing a number of trophies. Although the building is showing signs of neglect, there is apparently occasional use in the evenings and a religious group makes use of the building weekly.

Despite the current use of the building being limited, it is likely that the current use does further social wellbeing by being a meeting point for community groups. In addition to this, it appears the building has furthered the social wellbeing and interests of the community in the recent past. The building has several facilities such as a bar and stage providing the opportunity for different uses and benefits to the community. The notice board indicates the building has been used as an information point for the community. This use appears to be in the recent past as the facilities remain with the building.

In addition to this, 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 that would further the social wellbeing or interests of local community. There is a realistic chance that the community centre could be opened up to the wider community if the current Trustees invested money in to the property. It is located in a good position in a predominately residential area. It appears to have a number of facilities within the building which could be used for a variety of community uses, for example the stage and the bar area. Accordingly, there are a number of realistic options for the building [Worthy Developments Limited V Forest of Dean DC CR/2014/0005].

A planning application for the site was made in 2018 but this was withdrawn by the applicant. There are no planning permissions granted for the site nor is there other evidence to suggest a change of future use. The use of the car park in the recent past furthered the social wellbeing of the community by providing convenient means of access to the site [C, S and D V Shropshire Council CR/2015/0002]. The car park serves both the nursery school and the community building, therefore is an integral part of the site. It is realistic to think that use of the car park can continue to further the social wellbeing of the local community by providing a means of access and parking. As well as the community building, it is also realistic to think there is a time in the next five years when there could be non-ancillary use of this part of the land that would further the social wellbeing or social interests of the local community.

2.4 The land was entered into the Council's list of Assets of Community Value for a period of five years from 9 January 2020. The decision notice is located on pages 115 to 117 of the agenda.

2.5 In order for a building or land to be entered into the list of Assets of Community Value, a local authority must be of the opinion that pursuant to s88(1) of the Act

(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.

Or, if not, that pursuant to s88(2) of the Act

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local 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.

2.6 There is no definition of "social wellbeing or social interests", but s88(6) of the Act says:

"social interests" includes (in particular) each of the following—

- (a) cultural interests;*
- (b) recreational interests;*
- (c) sporting interests;*

2.7 On 23 April 2019 London Colney Parish Council submitted an application to St Albans City and District Council nominating the London Colney Village Club as an Asset of Community Value. The Council's nomination form contained a section headed "Why do you feel the property is an asset of community value? Please give as much information as possible". In its nomination the Parish Council stated:

London Colney Village Club was built on land gifted to the village by Charles Morris in 1922 and held in trust for the development of a community facility to be enjoyed by the members of the club. A social club was developed on the site which was run successful for many years as a member only facility and a popular venue for residents for family celebrations. Over time, the club's membership declined, and the building fell into a state of disrepair. The current owners of the site would like to develop it for housing with a smaller club house on the site. The key to protection of the site, was the formation of trustees, the principle trustee was the Vicar of St Peter's Church and if the parish council were take over control of the site, it is intended that trustees would be responsible for the running of the facility, which would include parish councillors.

There is a thriving nursery school on the site, offering day care to children in the village and much needed childcare provision for working families. The nursery school will lose its home if the site is developed. The nursery has been on the site for 13 years and has a waiting list for places.

An application has been submitted for housing on this land and the parish council would like to ensure that the site is retained by the community. If the Parish Council were to take over the site, any developments would be in fully consultation with existing users and the village.

- 2.8 As Reviewing Officer, I have to consider whether the nomination meets the criteria of s88(1) of the Act and the requirements of the Regulations.
- 2.9 Section 89(1) of the Act provides that land in a local authority's area which is of community value may be included by a local authority in its list of Assets of Community Value only
 - (a) in response to a community nomination; or
 - (b) where permitted by regulations made by the appropriate authority
- 2.10 Section 89(2) goes on to define the meaning of "community nomination". This subsection provides that a community nomination is a nomination which
 - (a) *nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and*
 - (b) *is made—*
 - (i) *by a parish council in respect of land in England in the parish council's area,*
 - (ii) *by a community council in respect of land in Wales in the community council's area, or*
 - (iii) *by a person that is a voluntary or community body with a local connection.*
- 2.11 Regulation 6 of the Regulations specifies that a community nomination must include the following matters:
 - (a) *a description of the nominated land including its proposed boundaries;*
 - (b) *a statement of all the information which the nominator has with regard to—*
 - (i) *the names of current occupants of the land, and*
 - (ii) *the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;*
 - (c) *the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and*
 - (d) *evidence that the nominator is eligible to make a community nomination.*
- 2.12 For the purposes of the moratorium period in s95 of the Act, s96 of the Act provides:

(2) A disposal of the freehold estate in land is a relevant disposal of the land if it is a disposal with vacant possession.

(4) If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding.

3. Representations submitted on behalf of the Owner

- 3.1 In a letter submitted on 4 February 2020 Birchwood solicitors acting on behalf of the Owner requested a review of the decision to list the London Colney Village Club. The Owner queried the time taken to reach the decision and also the impact of a pre-existing development agreement regarding the land.
- 3.2 The Owner subsequently submitted representations dated 8 March 2020 identifying two grounds for the review. These were failure to comply with mandatory requirements (as to timescale) and failure to consider relevant facts and an existing development agreement. The full representations can be seen in document 12 at pages 121 to 125 of the agenda.
- 3.3 With regard to the failure to comply with mandatory requirements, the Owner pointed out that the Council's decision for the inclusion of the Property in the list of assets of community value was made on 9 January 2020, over 37 weeks after the receipt by the local authority of the application. It referred to s89(5) of the Act which provides for regulations to be made relating to the procedure to be followed. It considered that this provision is mandatory and not directory in that the provisions are "to be" followed.
- 3.4 The Owner referred to Regulation 7 of the Regulations:

7. The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination.

It argued that the requirement that the responsible authority must reach its decision within eight weeks is mandatory and not advisory. Further, since the Council failed to reach a decision within the required period, taking over 37 weeks, it considered that the Council's decision is therefore a nullity.
- 3.5 The Owner then considered the Council's reliance on the First Tier Tribunal case of Crisdain (Crisdain Developments v Ealing Council [CR/2017/0009] – document 17 in the agenda, found at pages 131 to 139). It contends that the part of the judgement relied upon by the Council is a single dictum of Judge Christopher Hughes and is of limited, if any assistance to the question of whether a failure to comply with Regulation 7 invalidates a decision to list. In Crisdain, it says, the appeal was on two substantive points and there was no appeal before the court in relation to the failure to comply with Regulation 7. The dictum of Judge Hughes is therefore, at best, obiter. The judge was not asked to consider this point and there is no indication of any arguments being put before the judge on this point.

- 3.6 The Owner then refers to the Cullimore case (*Cullimore v Lyme Regis Corporation* [1962] 1 QB 718 – document 18 of the agenda, found at pages 140 - 141). This was a case relating to the Coast Protection Act 1949, where the council was required to determine charges to be levied on contributors within six months of the completion of works. The council did not in fact make the determination for 23 months. The Court found that the council was exercising statutory powers, rather than exercising statutory duties, and that it was obligatory for the council to strictly comply with the timescales. Accordingly, the determination was null and void and no charges were payable by the contributor. The Court also found that even had the council been performing statutory duties, there had not, on the facts been anything amounting to substantial compliance with the requirements.
- 3.7 The Owner concludes that the decision of the local authority to list, a decision made 8 months after receipt of the application, fails to comply with the mandatory statutory duty set out in Regulation 7 of the 2012 Regulations and is void and of no effect. In the alternative, the Owner argues that, if the provisions of Regulation 7 amount to statutory powers and are directory, there has not been substantive compliance with those powers and that the decision to list is, for this reason, void and of no effect.
- 3.8 Turning to the failure to consider relevant facts, the Owner draws attention to the fact of a development agreement dated 3 November 2017 between the Owner and Kossoway Automatics and Ravensgate London Colney Limited (the Developer). This development agreement is conditional on the satisfaction or waiver by the Developer of certain conditions (Conditions).
- 3.9 The Conditions include the Developer obtaining satisfactory planning permission and a satisfactory environmental report. Once the Conditions have been satisfied or waived by the Developer, the development agreement will become unconditional. Under the terms of the development agreement, once the agreement is unconditional, the Owner will be obliged to sell part of the land to the Developer. The Developer will then build a new clubhouse for use as a social club on land retained by the Owner and build residential units on the rest of the land currently comprised in the property. The Owner challenges the decision to list on the ground that the Council clearly did not take into account the clear and known evidence of a future change of use of the property.

4. Representations submitted on behalf of other parties

- 4.1 London Colney Parish Council confirmed by e-mail on 12 May 2020 that it had no representations to make on the review.
- 4.2 The Council's Regeneration and Investment Manager confirmed by e-mail on 15 May 2020 that she had no comments to make on the review based on the advice contained in the e-mail sent to the Owner by the Regulatory Solicitor on 19 February 2020.
- 4.3 The e-mail dated 19 February 2020 sent to the Owner by the Council's Regulatory Solicitor stated:

Time taken to reach the decision

We note your concern about the time taken to determine the nomination for London Colney Village Club to be listed as an asset of community value. We accept that section 89 of Localism Act 2011 and Regulation 7 of The Assets of Community Value (England) Regulations 2012 state that a nomination must be determined with eight weeks of the nomination being validated. Obviously we accept that the nomination was not determined in this timeframe, however there is no penalty for exceeding this period set out in the legislation. We consider that this does not invalidate the determination. I would draw your attention to the First Tier Tribunal decision of Crendain Developments Limited v Ealing Council [CR/2017/0009], paragraph 13:

“..The statutory instrument should not be construed in such a way that the breach by the Council of its duty under the Regulations to decide the application for listing within eight weeks enables the owner to defeat the purpose of the statute...”

The decision does highlight the fact that the determination should be made on the basis of the situation at the date by which the decision should have been made. We have determined this matter in accordance with this decision.

- 4.4 The Regulatory Solicitor in the same e-mail also stated in respect of the development agreement referred to by the Owner in 3.8 above:

We have considered whether the Development Agreement signed on 3rd November 2017, before the nomination was submitted or determined, is a relevant disposal. We note that section 96(4) of the Localism Act 2011 states that a relevant disposal that is triggered by a binding agreement is made at the time the agreement becomes binding. We accept that the Development Agreement became binding in November 2017. We have considered if the provision in section 96(4) can still be relied upon where the agreement is conditional. Given that even a conditional agreement will require the owner to comply with the terms of the agreement, we consider the Development Agreement amounts to an existing contractual obligation making it exempt under section 96(4). Therefore the proposed transaction can be treated as an exempt disposal.

5. My Decision

- 5.1 I have considered all written representations submitted on behalf of the Owner and other parties. In my view, this review raised the following issues:

Issue 1 – Does the land meet the test for inclusion in the list? This includes a consideration of the Owner's view that the Council failed to consider relevant facts and an existing development agreement.

Issue 2 – Failure to comply with mandatory requirements. Does taking longer than 8 weeks to determine the application in validate the decision?

Issue 1 – Test for inclusion in the list and failure to consider relevant facts

- 5.2 First I consider whether the nomination met the requirements of the Act. The nomination was made by London Colney Parish Council and the land is within the Parish Council's area. This meets the requirements of s89(2)(b)(i) of the Act. I also consider that the nomination includes the information specified in Regulation 6 of the Regulations. I am therefore satisfied that the nomination is a valid nomination.
- 5.3 Turning to the tests in s88 of the Act, there is no definition of "social wellbeing". "Social interests" includes, but is therefore not limited to, cultural, recreational and sporting interests. I note from other listing decisions that many varied uses have been considered to meet the test. I consider that use as a community centre is a use that furthers the social wellbeing or social interests of the local community. Use as a nursery also in my view is a use that furthers the social wellbeing or social interests of the community in that it provides a local service which benefits the children and parents of the community. The car park serves both the nursery school and the community building. I consider that it is an integral part of the site and is also a use which furthers the social wellbeing or social interests of the local community.
- 5.4 Are the uses set out above "current uses" for the purposes of s88? Based on the evidence, I consider that the nursery and car park are in current use. The community centre has been better used in the past, but on the evidence continues to have occasional use in the evenings and once a week. I therefore consider that the community centre is in current use.
- 5.5 Is it realistic to think that there can continue to be non-ancillary use of the building or land which will further (whether or not in the same way) which will further the social wellbeing or social interests of the local community? I note the representations of the Owners and the fact of the development agreement. I accept that a transfer of the land pursuant to the development agreement dated 3 November 2017 would be an exempt disposal. Such a disposal would be conditional upon the obtaining of satisfactory planning permission.
- 5.5 I am aware of two planning applications in respect of the site. These are 5/2018/3109 and 5/2020/0510. The description on both applications is – *New club building with associated one bedroom flat and nine terraced houses comprising two, two bedroom and seven, three bedroom houses, associated landscaping and parking and new access, following demolition of existing club and nursery buildings.*
- 5.6 A decision notice in respect of application 5/2018/3109 was issued on 1 May 2019 confirming the application had been withdrawn. This is the planning application referred to in the reasons for the listing. According to the Council's website, a decision on application 5/2020/0510 is still pending. The 2020 application was received on 28 February 2020, so would not have been submitted prior to the decision to list the property.
- 5.7 Although there is a current planning application, there is no guarantee that this would be granted. Even if it were granted, whether it was implemented would depend upon market conditions at the time. Again, there is no definition of "realistic", but case law indicates that this means "more than fanciful". In

Crendain (at paragraph 14), Judge Hughes considers the level of uncertainty over the five-year period of protection under a listing. He refers to the 2008 banking crisis and the 2016 decision to leave the European Union. To these we can now add the 2020 coronavirus pandemic, the impacts of which are still unclear. The next few years continue to be “foreseeably unforeseeable”. It is possible that, even if permission were granted, the development of the site will not be financially advantageous and that the current use of the site will continue, or another community use will be found. I therefore consider that it is realistic to think that there can continue to be non-ancillary use of the building or land which will further the social wellbeing or social interests of the local community. The s88 test is therefore met.

- 5.8 While I have determined that the uses of the site are current uses, it is clear that the community centre has been better used in the past. Even were there no current use of the community centre, it is clear that it has been well used in the past. There is no definition of “recent past” for the purposes of the test in s88(2)(a). However, based on the evidence, if the community centre is not in current use, I consider that it was used for the relevant purposes in the recent past and the s88 test is met.

Issue 2 – Failure to Comply with mandatory requirements

- 5.9 Regulation 7 of the Regulations requires that the Council must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination. The nomination was received on 23 April 2019. The listing decision notice is dated 9 January 2020. Clearly a period of more than eight months is substantially more than the eight weeks period set out in the Regulations. The Owner considers that the length of time taken to determine the nomination invalidates the decision.
- 5.10 There is no sanction set out in the legislation for failure to determine a nomination within eight weeks and no indication of the consequences of failure to determine within the period. I consider that the legislation creates a duty for the Council to consider and determine a nomination. If the building/land meets the criteria for listing, then the Council is obliged to add the building/land to the list, whether this is outside the period or not. Failure to determine within the eight-week period does not relate to the statutory criteria for listing and would not be a ground for not listing an asset.
- 5.11 I note the Owner’s position on the Crendain case. I accept that it does not appear that the Judge was asked to consider the eight weeks point and it was not one of the appellant’s grounds of appeal. However, an appeal is by way of a rehearing, creating a fresh decision. It is therefore a reconsideration of the issues. Judge Hughes specifically raised and considered the issue regarding the time taken to determine the nomination. He was satisfied that the grounds for listing the land under s88 were made out and he dismissed the appeal. Had he considered the time taken was fatal to the matter, he would not have so determined.

- 5.12 I have noted the Owner's points on Cullimore. In this case the Court found that the Council was exercising statutory powers and was required to strictly comply with the provisions of the Coast Protection Act 1949. The Court also expressed the view that had the Council been exercising a statutory duty, the Court did not consider, on the facts, that there had been anything amounting to substantial compliance. As indicated above, I consider that in the matter before me, the Council was exercising a statutory duty.
- 5.13 I find that the statutory criteria for listing are met and therefore the Council was obliged to add the property to the list even though the listing was outside the eight-week period.
- 5.14 For the reasons outlined above it is my decision that the property known as the London Colney Village Club should continue to be included in the Council's lists of Assets of Community Value. The Owner may appeal this listing review decision to the First Tier Tribunal.

Charles Turner

Solicitor to the Council and Monitoring Officer

10 September 2020

Appeal of Decision

The Owner can appeal the Review Decision to the First Tier Tribunal [General Regulatory Tribunal].