

**COMMUNITY RIGHT TO BID  
REVIEW DECISION NOTICE**

(Section 92 Localism Act 2011)

To:

**Applicant for the Review** Paratrend Limited

**Nominating Group** South Hertfordshire CAMRA

**Other owners**

A request was made for a review of the decision to include land in the List of Assets of Community value on 10<sup>th</sup> December 2015 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:

Red Cow Public House, Westfield Road, Harpenden

**Land Registry Nos.** HD296565

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 subject to the amendment to the listing plan.

The reasons for the decision are set out in the attached Review Decision.

**M Lovelady**  
**Head of Legal, Democratic and Regulatory Services**

**24<sup>th</sup> February 2017**

**APPEAL OF DECISION: THE OWNER CAN APPEAL THE REVIEW DECISION TO  
THE FIRST-TIER TRIBUNAL**

## **RED COW PUBLIC HOUSE, 171 WESTFIELD ROAD, HARPENDEN**

### **My reasons for the decision:**

#### **1 Review Decision**

1.1 I have been requested to conduct a written review into the listing of the Red Cow Public House, Westfield Road, Harpenden as an Asset of Community Value. The public house was listed by St Albans City and District Council under a Notice dated 8 December 2015. By emails dated 10 December 2015 and 15 January 2016 Mr Pat Stell, a director of Paratrend ('Paratrend') Limited, the freehold owner of the Red Cow Public House, requested a review of the Council's decision pursuant to Schedule 2, paragraph 1(1) of the Assets of Community Value (England) Regulations 2012. Mr Stell requested that the review be conducted on the basis of written representations.

#### **2 Background**

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

- (a) Agenda entitled the Red Cow PH, Harpenden Written Review dated 21 April 2016. This agenda comprises 197 pages. Included in the Agenda pack are extracts from the Localism Act on the Assets of Community Value (England) Regulations 2012, a Nomination form dated 19 August 2015 submitted by John Kemp on behalf of the South Hertfordshire CAMRA (Campaign for Real Ale) to list the Red Cow Public House as an Asset of Community Value, a decision notice dated 8 December 2015 by Debbi White, Property and Asset Manager, SADC, a site inspection form and photographs of the public house, a request for review and submissions made on behalf of Paratrend Limited – emails and submissions between 2 October 2015 and 30 March 2016, submission by Debbi White dated 22 February 2016, submissions on behalf of the nominating group CAMRA dated 24 February, 24 March and 12 January 2016 and copies of First Tier Tribunal Decisions in the cases of Sawtell v Devon District Council (Ref No: CR/2014/0008) regarding the Mare and Foal Public House and Worthy Developments Limited v Forest of Dean District Council (Ref No: CR/2014/0005) regarding the Rising Sun Public House.
- (b) Addendum to the Agenda dated 28 April 2016. This comprises an annotated plan showing the pub boundaries and a second plan showing the physical boundaries of the application site. Both these documents were submitted by Mr Pat Snell on behalf of the owner Paratrend Limited.
- (c) Supplemental Agenda dated 1 June 2016. This Supplemental Agenda contains a number of emails from Mr Stell on behalf of the owner Paratrend Limited together with attachments dated between 29 April 2016 and 25 May 2016. The Supplemental Agenda comprises 28 pages.
- (d) Various emails from Mr Stell on behalf of Paratrend and from Messrs Kemp, Strachan and DeFriez on behalf of the nominating group (South

Hertfordshire CAMRA. Copies of these emails are contained in appendix 1 and referred to in section 7 of my decision.

2.2 I am delegated by the Council in consultation with Councillor Julian Daly to consider and determine requests for reviews of Council decision to list land as an Asset of Community Value.

2.3 The Red Cow Public House has been entered into the lists of Assets of Community Value maintained by the Council. The reasons given for the decision to list are as follows:

The primary use of the Asset, now or in the recent past, furthers or has furthered the local community social well-being interest in that;

- It has recently been purchased by a company that has granted a five year tenancy to publicans to run a public house
- The property has been refurbished to a good standard and has a very welcoming atmosphere
- At the time of inspection (Friday lunch time) there were around a dozen customers of all age ranges.
- The pub has only been re-opened for about 3 weeks but already appears to be attracting local people. We were told the opening night had 200 people and subsequent Friday evenings in particular have been very busy
- The publican advised that they would be running quiz nights starting in December
- There was a large screen TV in the bar and a varied food menu
- There is a car park and seating at the front of the pub with a garden and patio at the rear (though these areas were not yet re-furbished into proper seating areas).
- In terms of location, it is the only pub within about 15 min walk, serving a large residential estate, opposite a large allotment site and close to an industrial estate.

The land was entered onto the list for 5 years from 30 November 2015. The decision notice and a location plan are located at pages 138-140 of the Agenda dated 21 April 2016.

2.4 In order for a building or other land to be entered onto the list of Assets of Community Value a local authority must be of the opinion that the building or land meets the criteria in Section 88(1) or 88(2) of the Localism Act 2011. Section 88(1) is concerned with an actual current use of the building or other land that is not an ancillary use. Under this section a building or other land in a local authority's area is land of community value if in the opinion of a local authority (a) an actual current use which is not ancillary furthers the social well-being 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 well-being or social interests of the local community. Section 88 (2) provides that a building or other land 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 other land that was not an ancillary use furthered the social well-being or interests of the local community,

and (b) it is realistic to think that there is a time in the next 5 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 well-being or social interests of the local community.

- 2.5 On the 19 August 2015 Mr John Kemp, Membership Secretary, of South Hertfordshire CAMRA submitted an application to St Albans City and District Council nominating the Red Cow Public House as an Asset of Community Value. The Nomination form stated that South Hertfordshire CAMRA is a company limited by guarantee and has 1,934 members. 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 his Nomination form Mr Kemp states as follows "the Red Cow is the only pub serving the local community with the nearest pub being just over half a mile away. It has a loyal patronage by local residents and provides employment opportunity to local people for bar, kitchen and cleaning work. Located on one of the two main roads linking east part to the main part of Harpenden, it attracts passing trade and is on a bus route. Having spoken to several people who frequent the pub, a signature of support is feasible". Mr Kemp lists examples of the services provided by the pub which he contends further the social well-being and interests of the local community. These examples included that the pub had a beer garden attached which was used and enjoyed by the local people. It has a great food menu enjoyed by the local community and offers a dart board and board games. Mr Kemp attached to his Nomination form a copy of the Articles of Association of CAMRA and a site boundary plan showing the boundaries of the land marked by a red line.
- 2.6 The Red Cow Public House was closed at the time of the nomination by CAMRA on 19 August 2015 prior to the transfer by the current owner, Paratrend Limited on 20<sup>th</sup> October 2015. It would appear that the Red Cow Public House was closed for refurbishment during Autumn 2015. However, when the property was inspected by Lyn Henny, a Property Surveyor, employed by the Council on 13 November 2015, the pub had reopened. When Ms White made her decision on 8 December 2015 to enter the Red Cow Public House on to the list of Assets of Community Value it was open and trading. Therefore, as Reviewing Officer, I have to consider whether the Nomination meets the criteria of Section 88 (1) of the Localism Act 2011 and the requirements of the Assets of Community Value (England) Regulations 2012.
- 2.7 Section 89(1) of the Localism Act 2011 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
- Section 89(2) goes on to define the meaning of the term "Community Nomination". This subsection provides that a Community Nomination means 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.
- 2.8 The Assets of Community Value (England) Regulations 2012 provide definitions of a community body and also specify the requirements which a community body (other than a Parish Council) has to meet in order to have a local connection with land in a local authority's area. Regulation 5 lists various bodies which come within the definition of a voluntary or community body. This includes at Regulation 5 (2)(e) a company limited by guarantee which does not distribute any surplus it makes to its members. It also includes an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members – see Regulation 5 (2)(c).
- 2.9 Regulation 6 of the 2012 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 the 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;
  - (e) evidence that the nominator is eligible to make a community nomination.
- 2.10 The term "local connection" is defined in Regulation 4 of the 2012 Regulations. This provides that 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 partly concerned (i) with the local authority's area or (ii) with a neighbouring authority's area". Where the nominator is a voluntary or community body qualifying within Regulation 5(1) (c), (e) or (f), then any surplus which they make must be wholly or partially applied for the benefit of the local authority's area or for the benefit of a neighbouring authority's area – see Regulation 4 (1) (b).

### **3 Representations submitted on behalf of the owner Paratrend Limited**

3.1 In an email dated 10 December 2015 Mr Stell, on behalf of the owner, submitted the following grounds for requesting a review of the decision to list The Red Cow Public House.

- 1 The matters set out in Paratrend's letter dated 2 October 2015 including Appendices (see letter at pages 158-162 and attached report from Drake and Company dated 30 September 2015 at pages 163 and 164 of the Agenda dated 21 April 2016). In his letter to Ms Adamson, the Council's Regulatory Solicitor, Mr Stell says that Paratrend are a small property investment company which focuses on sustaining viable non-tied pubs. He explains that the Red Cow has been leased to new pub tenants on a 5 year lease. He wishes to draw the following matters to the Council's attention.

- (a) There are many successfully trading pubs in Harpenden and there is not any need to grant ACV status to the Red Cow
- (b) The Red Cow is not under threat
- (c) Although the Red Cow has the potential to be an important hub for the community, potential is specifically excluded from the legal criteria upon which ACV status is awarded
- (d) There is no evidence to suggest that the community uses the pub for social functions. It is not a village pub, being located in a housing estate close to the town centre with many other public houses available within easy walking distance
- (e) That until recently the pub has not been well used. The report from Drake and Company confirms that beer sales volume has over recent years been very low for a tied pub. Based on ACV experts they have spoken to, an ACV community pub should be achieving sales of 180 barrels plus per annum. However, the annualised sales figures for the Red Cow for the period 2012/2015 showed beer sales within the range of 61.9/74 beer barrels
- (f) Based on the above the Red Cow is simply not fulfilling the ACV criteria.

2 SADCs email dated 2.12.15.

This email was not attached to Mr Stell's email dated 10 December 2015. I have obtained a copy of this email which was from Debbi White, the Council's original decision maker. I attach a copy of her email and associated emails at **APPENDIX 1 (1)** to my Decision.

3 That the grounds for the SADC decision are (i) speculative and (ii) based on the future unknown performance of a business based on a cursory inspection.

4 That despite his conversation with Lyn Henny of SADC on 1 October 2015 (Mr Stell refers to paragraph 2 of his letter to the Council dated 2 October 2015 which is at pages 159-162 of the main Agenda), the Freeholder's representations have not been factored in (whether informally or otherwise). He says this was confirmed to be the case by Lyn Henny during their conversation on 1 October. Mr Stell states that whilst he appreciates that the statutory procedure appears to be that the Nominee Party has no right of representation at the initial consideration of the Nomination, it is clear from his conversation with Ms Henny that the established/normal 'actual' procedure on all other Nominations has been to factor in the Nominee's representations at the initial stage. Mr Stell states that it is his case that SADC have set and acknowledged a clear precedent locally for dealing with such Nominations and that to vary from this course of action is prejudicial to the Nominee in this case.

5 Mr Stell submits that having met with the CAMRA representative, it is clear that Nominators have very little knowledge of how the pub ran and operated up to the date of Nomination and up to the date Paratrend granted a new lease (which CAMRA have not chosen to investigate). Mr Stell submits that CAMRA's Nomination was speculative and factually incorrect.

- 3.2 In his email dated 10 December 2015 Mr Stell requested an oral hearing. However, in a subsequent email dated 15 January 2016 to Judith Adamson, Mr Stell opted for the written submission route. Then, in an email dated 23 February 2016 to Ms Adamson, Mr Stell submitted a site lease plan which is the basis of the Tenant's Lease. Mr Stell requested that the lease plan be kept confidential because it was commercially sensitive. He states that the Tenant of the Red Cow trades entirely within the outlines of the Red Lion boundary shown on the lease plan and not within the larger boundary shown on the Land Registry plan attached to the decision notice. Mr Stell states that areas outside the lease demise are used for non-public house purposes and as such it is not appropriate for these areas to form any part of the Asset of Community Value. Mr Stell also states that a site inspection will show that the area of land outside of the lease demise is currently used for builders' storage.
- 3.3 Mr Stell also submitted an email dated 24 March 2016 to Rob Strachan of the South Hertfordshire Branch of CAMRA (contained at pages 166 and 167 of the Agenda). In this email Mr Stell pointed out to CAMRA that the curtilage of the site plan on the Red Cow ACV Nomination is not correct because the current commercial tenant of the Red Cow Pub does not have any right to occupy circa 50% of the land that CAMRA have nominated for ACV status. Mr Stell comments that this leaves the potentially anomalous situation whereby land occupied by a third party (i.e. a non –pub operator) is subject to an ACV Nomination. Mr Stell states that the tenant's lease is not registered at the Land Registry because it does not require registration by law. He says that the land around the pub is being used separately, albeit it would form part of any new demise for the pub if planning consent is granted on appeal. He also points out that there is a significant boundary dispute which can be observed on any site visit. Mr Stell states that part of the land that is subject to CAMRA's ACV Nomination is currently being aggressively claimed by an adjoining developer who claims that it is not Paratrend's land. Mr Stell states that HMLR has yet to determine ownership with a Boundary Agreement.
- 3.4 On 24 March 2016, Mr Stell submitted a further email to Judith Adamson. He states that he has been advised that the Nomination is invalid because an ACV Nomination cannot extend to cover a wider freehold site that is not part of the operation of the pub and is used by third parties who have rights over it. Mr Stell therefore invites the Council to reject CAMRA's Nomination. He also observes that the inspections by SADC and CAMRA of the pub were made shortly after the re-launch when trade was brisk. Mr Stell comments that trade is now at a more moderate level. Mr Stell states that the Nomination includes land which is outside of the control of the landlord of the pub. If the Nomination stands the Council will have granted ACV status to an area of derelict crushed concrete subject to a boundary dispute with a further third party. Mr Stell states that the non-pub controlled land is a subject of a legal dispute because the current boundaries are shortly to be subject of litigation. Mr Stell states that following refusal of a planning application to extend the pub they would be exploring other options for the parts of their freehold site that are not occupied by the pub tenant.

- 3.5 On 30 March 2016 Mr Stell submitted an email to Ms Adamson which contains in red text inserts Paratrend's response to an email from Rob Strachan dated 29 March 2016. This email is at pages 171 to 174 of the Agenda. In his response to Mr Strachan, Mr Stell states that the Nomination plan submitted by CAMRA has the wrong boundaries. In response to a comment by Mr Strachan that CAMRA is delighted to see the pub is more vibrant than in recent years Mr Stell contends that this is a misleading statement based on no evidence. He states that the barrelage has been in massive decline over recent years and is contrary to all the evidence submitted in relation to trade at the pub. Mr Stell refers to the report from Drake and Co, Chartered Surveyors, representing the previous owners dated 30 September 2015 (found at page 164 of the Agenda). Mr Stell states that all the available evidence is quite clear that until 2015 the pub was failing and that the Council inspection coincided with the re-launch of the Tenant's business which was during a period of time that was not representative of actual (lower)medium/long term trade patterns.
- 3.6 Mr Stell then submitted an annotated plan based on an extract of the 2015 planning application showing the area within the pub lease and an area of land hatched red and an area of land hatched green occupied by various third parties. (See page III of the Addendum to the Agenda dated 28 April 2016).
- 3.7 Further submissions by Mr Stell were included in the Supplemental Agenda dated 1 June 2016. It includes an email dated 29 April 2016 from Mr Stell to Rob Strachan which records the matters discussed at a site meeting between Mr Strachan and Mr Stell. In this email it is recorded that Paratrend Limited and CAMRA agree that the thick black line on the first and second plans and the first attachment to the email was the boundary for which CAMRA applied for ACV status for the Red Cow Pub. It is recorded that Paratrend advise that in their view the site for which an ACV Nomination applies should have the red line of the actual pub site. The meeting note records that CAMRA will issue to the Council a revised plan showing the actual boundaries because CAMRA no longer wish to have certain areas of the site shown on the plan attached to the 2015 Nomination listed for ACV status. It is also noted that CAMRA have no wish to apply for ACV status for land owned by Paratrend Limited that is subject to trespass which is now under development by third parties. The Supplemental Agenda also contains at pages VIII – X various site plans submitted by Mr Stell and at pages XI – XIV photographs taken at the site meeting between Paratrend and CAMRA on 29 April 2016. On 3 May 2016 Mr Strachan sent an email to Mr Stell attaching a plan showing revised boundaries to CAMRA's ACV Nomination. Mr Stell replied the same day with his comments on Mr Strachan's plan (see emails and plans at pages XV – XVIII). On 13 May Mr Strachan sent an email to Mr Stell. In his email Mr Strachan states that CAMRA's Nomination is not a legal document in terms of pub and land ownership. He states it is a submission for consideration by the Council. In a reply dated 13 May Mr Stell states that the ACV Nomination has significant legal and financial implications for Paratrend. Mr Stell comments on Mr Strachan's revised plan and requests that CAMRA withdraw their ACV Nomination. He states that if CAMRA wish to proceed with the ACV the correct boundaries

should be agreed. In an email dated 16 May to Mr Stell, Mr Strachan states that following discussions with the South Herts CAMRA Committee no changes will be made to the Title plan showing the boundary as submitted with the ACV Nomination. Mr Strachan also stated that South Herts CAMRA do not intend to withdraw the ACV Nomination.

- 3.8 The Supplemental Agenda also includes an email from Mr Stell to Ms Adamson dated 16 May 2016. Mr Stell refers to his recent emails with CAMRA regarding the boundaries of the application site. He informs Ms Adamson that discussions on the extent of the boundary of the ACV Nomination site have reached a stalemate. He says that CAMRA as nominator have chosen not to change the plans attached to their Nomination. He wishes the following points to be drawn to my attention:
1. Because CAMRA have themselves stated that the area occupied by the pub is materially less than the site plan lodged with the Land Registry it is Paratrend's case that the Nomination has to be withdrawn.
  2. There is a boundary dispute between Paratrend and the adjoining owner, a fact not disputed by CAMRA.
  3. It is highly likely that Paratrend will have to concede a portion of their site.
  4. If the original CAMRA Nomination stands the consequence will be that the adjacent residential plots will have back gardens that are part ACV nominated. Any boundary agreement between Paratrend Limited and the adjoining owner to hand over a strip of land would be illegal because Paratrend are obliged to offer the ACV land to CAMRA in the first instance.
  5. The lack of precision on the boundary issue is further evidence that the Red Cow pub was not properly inspected at the time of the Nomination or thereafter.
  6. The persistent complaints from CAMRA about alleged breaches of planning law by the Tenant amount to an incredible burden on the business of running a pub.
- 3.9 In an email dated 25 May 2016 to Ms Adamson, Mr Stell drew attention to a recent decision by HM Land Registry to clarify the site boundaries of Paratrend's Title to the land known as 171 Westfield Road (HMLR Ref: HD296565). Mr Stell attached a copy of the latest HMLR Plans (see page XXVII). He states that the Title Plan now correctly records the land edged red on the plan as 171 Westfield Road, Harpenden, AL5 4ND and not the Red Cow. He states that the curtilage of the Red Cow Public House is in fact the much smaller area of land as shown on the plans previously submitted to the Council and now recorded on the HMLR plans and annotated accordingly. Mr Stell submits that HMLR now accept that the small part of the site is the location and extent to the Public House and that the site which was nominated for ACV status by Decision Notice 30.11.15 including the plan attached thereto is wrong. Mr Stell says that the smaller part of Paratrend's land that HMLR now correctly refers to as 'the Red Cow' should have been the subject of the ACV decision. He refers to an annotated plan at page XXVIII of the Supplemental Agenda which shows the difference of actual boundaries between the plan attached to the SADC Decision Notice and the boundaries as determined by HMLR for their

register as at 25 May 2016. Mr Stell also drew attention to CAMRA's email dated 3 May 2016 wherein they agreed that the boundaries on their ACV Nomination and the Council's Decision Notice were wrong. He states that this recent determination by HMLR draws to a conclusion a long running boundary dispute with an adjoining owner. Mr Stell maintains that if an ACV Nomination is appropriate it can only be for the area of land that HMLR identify as the Red Cow. Mr Stell says that the latest HMLR plans create a situation whereby the SADC Decision Notice is now flawed. He then goes on in his email to describe the consequences if the Council's Decision Notice is allowed to stand. In summary Mr Stell considers that Paratrend are being victimised by a process driven by the Nominator Party who has submitted a standardised ACV Nomination without fully considering the issues or the site. He says this has been exacerbated by Mr Strachan initially agreeing that the boundaries on the Decision Notice were wrong and then withdrawing that agreement.

#### **4 Representations submitted by Debbi White, the Council's Original Decision Maker**

- 4.1 Debbi White's submissions are contained at pages 185-191 of the Agenda dated 21 April 2016. In her submission dated 22 February 2016 Ms White responds to the grounds for review put forward by Mr Stell on behalf of Paratrend Limited.
- 4.2 Ms White responds that as the first decision maker she is required to consider whether the primary use of the asset, now or in the recent past, furthers or has furthered the local community social well-being or interest. Ms White states that based on the information contained in the Nomination form and her own observations during her inspection on 13 November she is satisfied that the property meets the criteria. Ms White comments that the pub has been refurbished internally to a good standard and has a welcoming atmosphere. She states that around a dozen customers of varying ages were present in the pub and that she was advised by the publican that weekend evenings in particular are very popular. Ms White states that recent case law suggests that financial viability is not relevant to the question of whether an asset has furthered the social well-being or the interests of the community. Ms White refers to a number of First Tier Tribunal decisions including that of T G Sawtell which appears on the Agenda pages 192 to 193.
- 4.3 In his grounds of appeal Mr Stell on behalf of Paratrend submitted that the Freeholder's representations had not been factored in to the Council's decision. Mr Stell stated that it was clear that the established procedure on all other Nominations has been to factor in the Nominee's representations. Ms White responds that as the initial decision maker she considered the recommendation made to her by Lyn Henny, the Council's Asset Manager Surveyor. Ms White states that whether she takes other representations into account depends very much on whether she requires further information in order to make her decision. In this case, Ms White states that she was satisfied from her own observations and the information contained in the Nomination form that the pub met the criteria.

- 4.4 In her submission Ms White refers to a letter from the Owner dated 2 October 2015 to Ms Adamson (this letter can be found at pages 158-162 of the Agenda dated 21 April 2016). Ms White states that the representations made in this letter from the Owner would have added weight to her decision to list the Asset. In his letter Mr Stell states that the Red Cow Public House building is Grade 2 listed and therefore demolition is not an option or risk. Further Mr Stell states that Permitted Development Rights are also not relevant, thereby removing the basis of the ACV application. Ms White comments that previous case law suggests that what is realistic may not necessarily be what is most likely. Ms White refers to the First Tribunal decisions in Evenden Estates (Rose Hill Tavern) Ref No: CR/2014/0015 (para 15) and M. Patel (Chesham Arms PH) Ref No CR/2013/0005 (paras 8-16). Ms White maintains that these decisions indicate that, although the applicant's intention to develop was relevant, it was not conclusive as there were other realistic options. Ms White comments that given that the building is Grade 2 Listed the likelihood that this site will be redeveloped is reduced. Ms White says that this supports the presumption that it is realistic to consider that the use (of the Red Cow) as an Asset of Community Value will continue in the future.
- 4.5 Ms White also comments on the statement in paragraph 4 of Mr Stell's letter that Paratrend are a small property investment company focusing on sustaining viable non-tied pubs and currently own three trading pubs including the Red Cow in Harpenden. In a conversation between Mr Stell and Charles Turner (Legal Services Manager) of SADC, Mr Turner had noted that Paratrend Limited are described at Companies House as "Property Developers". In his letter Mr Stell stated that all the company's current assets are public house use class buildings, let on long leases and that possibly too much was being read into this information. Ms White responds that the fact that the Owner appears to specialise in sustaining viable non-tied pubs supports the presumption that it is realistic to consider that the use as an Asset of Community Value will continue in the future.
- 4.6 Ms White notes that in his letter Mr Stell states that Paratrend's core business is to purchase previously tied pubs and then re-let them on a "free of tie" basis to local reputable publican tenants allowing them to purchase beer/wines/spirits on the free market at much more competitive prices. Ms White comments that as the publican of the Red Cow has taken on a 5 year lease, this ability to buy "free of tie" will assist her to respond to the demands of the local community and increase the likelihood of the property continuing to be an Asset of Community Value in the future. In his letter to Judith Adamson, Mr Stell states that the Red Cow building has been leased to new pub tenants on a full 5 year lease for use as a public house only. Mr Stell also says in his letter that the 5 year lease has no break options and there is no possibility that the pub being redeveloped by the Tenant under the terms of the lease. In response, Ms White comments that the requirement that the property continues to be used as a pub for 5 years supports the presumption that it is realistic to consider that the use as an Asset of Community Value will continue in the future.

- 4.7 At paragraph 7 of his letter Mr Stell makes it clear that he does not want there to be any suggestion that the operation at the Red Cow pub is (or was) under any threat or at any risk of closure or demolition. Ms White states that this comment suggests that the owner wants to ensure that the pub remains and that the public is aware of this. Ms White states that she is satisfied that the nature of this pub means that it does meet the criteria and the fact that it will remain as a pub supports the presumption that it is realistic to consider that the use as an Asset of Community Value will continue in the future.
- 4.8 In his letter Mr Stell observes that although the Red Cow may have the potential to be an important hub for the community, “potential” is specifically excluded from the legal criteria upon which ACV status is awarded. Mr Stell points out that this property has not been considered by the Council to be of important local social benefit (reference the SADC Local Plan and other references which do not include this building). Ms White responds to the statement by saying that deciding whether or not an Asset meets the criteria does not depend on the decision of the local planning authority. Listing relies on the asset meeting the criteria in Section 88 of the Localism Act 2011. Ms White is of the opinion that the pub meets the criteria that it is now, has been in the past, and is likely to continue in the future an asset which furthers the social well-being of the community. Ms White comments that it is not speculation that the pub is used as a meeting place for local residents to enjoy food, board games, television, pub quizzes etc. Ms White says that she is not assessing the potential.
- 4.9 In his letter dated 2 October 2015 Mr Stell states that there is no evidence to suggest the community uses the pub for social functions. He says in his letter that it is not a village pub that is the heart of the community as it is located in a housing estate close to the town centre with many other public houses available within easy walking distance. In her written submission Ms White responds that it is not necessary for an asset to be in the heart of a community for it to meet the criteria for listing. She said the asset must further the social well-being of the community. Ms White believes that in providing a meeting place where local community can socialise, eat food, partake of social events such as games, music and TV, the pub meets the criteria.
- 4.10 In his letter Mr Stell states that until recently the pub has not been well used and has been in decline for a number of years. In response Ms White submits that financial viability is not relevant to the question of whether an asset has furthered the social well-being or interests of the community. Ms White contends that the fact that the pub has continued to trade and to be a place where the community could meet, socialise, eat and take part in activities, suggests that, regardless of the number of pints of beer sold, it furthered the social well-being or interests of the community. Ms White also draws attention to the comment in paragraph 4 of Mr Stell’s letter that “we are a small property investment company focussing on sustaining viable non-tied pubs”. She says that although not relevant, it appears the Owner believed the pub was viable when purchased.
- 4.11 In his email dated 10 December 2015 Mr Stell states that having met with the CAMRA representative it is clear that the Nominators have very little knowledge

of how the pub ran and operated up to the date of nomination and up to the date Paratrend granted a new lease. Mr Stell states that their nomination was speculative and factually incorrect. In response Ms White said she cannot comment on CAMRA's intentions and says that they are not relevant in her assessment. However, from her inspection Ms White says that she found the information contained in the Nomination to be largely consistent with her own observations.

- 4.12 Ms White considers it reasonable to conclude that now and in the recent past the pub furthers/has furthered the social wellbeing or interests of the local community. Ms White also believes that the value to the community could continue in the future. Her reason for this is that the owner has granted a 5 year lease to the current publican. Ms White states that it is realistic to assume therefore that the publican will run the property as a public house and attempt to maintain and grow the business for at least 5 years. She therefore believes her decision to list the Red Cow public house as an Asset of Community Value was reasonable.

## **5 Representations submitted on behalf of the nominating group, CAMRA**

- 5.1 Written submissions have been made by Philip Defriez on behalf of the nominating group, the South Hertfordshire Branch of CAMRA dated 24 February 2016. These submissions can be found at pages 175-184 of the main agenda dated 21 April 2016.
- 5.2 In his submission Mr Defriez states that during 2015 the Red Cow pub freehold was observed to be for sale by the then owners Enterprise Inns. He states that there was no information about the pub as an on-going concern and this prompted the local branch of CAMRA to register the pub as an Asset of Community Value. Mr Defriez provides a history of the Red Cow public house dating back to 1851. Mr Defriez states that the Red Cow is the only pub serving the local community with the nearest pub being over half a mile away. He goes on to refer to the location of the pub and list the services provided by the pub which he contends further the social well-being and interests of the local community. Mr Defriez refers to a number of services including a beer garden, a great food menu, free parking and good transport links. He also states that the pub offers a dart board and board games and has won the Council run Harpenden in Bloom competition for best public house category on several occasions. He says that the decision to back the nomination was agreed at a meeting of the South Hertfordshire branch of CAMRA and that the local branch decided to proceed with the nomination after the pub was bought by Paratrend and a 5 year lease put in place.
- 5.3 Mr Defriez comments on the viability of the pub. He says that turnover figures were not available at the time of nomination. It was evident that Enterprise Inns had not invested in the pub for a considerable time. However, the pub was still a focal point for a range of social groups who meet at the pub and on that basis the pub was providing a social well-being contribution to the local community. Mr Defriez refers to an extract of the findings of the Council representative who visited 3 weeks after the reopening of the pub.

- 5.4 Mr Defriez also drew attention to a Viability Statement made by Paratrend in the Design and Access Statement in support of planning application 5/2015/3548. This mentions that there has been a continued downturn in the number of “wet” sales in recent years which led to the recent sale of the premises. It says that the public house sold circa 1,700 pints per annum which is an extremely low turnover to support the on-going business. Mr Defriez comments that the statement of circa 1,700 pints is not substantiated and it is not explained if this is a projected figure or an actual figure averaged over several years. He states that in general pub owners would quote barrelage where one barrel is equivalent to 288 pints. He says that a thriving large pub can easily turn over 1,000 per year with a small to medium sized pub achieving typically 350 to 500 barrels a year. Mr Defriez says that to sell beer in a pub requires ideally a barrel per hand pump every 14/21 days. He states that the Red Cow has at least one hand-pump serving real ale and that the figure of 1, 700 pints per year is only equivalent to 6 barrels. Mr Defriez queries whether it is possible to run a pub at that low level.
- 5.5 Mr Defriez says that as a branch they had visited the pub a number of times and would like to highlight that it is a short distance from the disused railway line which is used by many cyclists and walkers who through the year value the pub. Mr Defriez comments that the pub now serves beer from the local Hertfordshire Tring Brewery and that this is also an attraction to locals in the vicinity to sample local beer.
- 5.6 Mr Defriez states that there is no reason to remove the ACV listing of the Red Cow public house as the ACV in itself does not impinge on planning consent which already requires listed building consent for any changes to the pub.
- 5.7 Attached to the representations are copies of an email dated 29 March 2016 from Robert Strachan of CAMRA to Mr Stell of Paratrend and a letter dated 12 January 2016 from Robert Strachan which was attached to an email dated 12 April 2016 to Judith Adamson, Regulatory Solicitor. In his email dated 29 March Mr Strachan notes that there is a current boundary dispute but states that the applicant has provided a site location plan identifying the boundary of the site with a red outline and provided a signed Certificate A with the planning application to demonstrate that the site is in their ownership. He notes that in the planning application there is reference to a significant planned increase in the number employed at the pub. He states that the car park layout indicates the use of some of the parking spaces by employees and visitors to the pub. He maintains that this is temporary use by the public, tenant and employees of the pub. He concludes that CAMRA wish to see pubs thrive whilst protecting each pub’s unique historic character and setting.
- 5.8 In his letter dated 12 January 2016 to Judith Adamson Mr Strachan states that the ACV nomination was based on the boundary held by HMLR. He says that the purpose of the ACV is to declare the pub and its surrounding setting as an asset to the community. Mr Strachan maintains that the surrounding land is part and parcel of the viability of the pub in terms of the car parking availability. Mr Strachan goes on to refer to a planning objections made by a local resident to planning application 5/2015/3548. He comments that if the planning

application had been accepted presumably Paratrend would have re-drawn the tenant's lease to include the extension. He notes that Paratrend's statement includes considering alternative uses for around half the land to the side and behind the Red Cow public house. Mr Strachan comments that this would require a planning application due to the proximity to the Grade 2 listed building. He concludes that the CAMRA nominating group stand by their original nomination.

## **6 Additional Representations**

- 6.1 As part of my review I sought clarification from Judith Adamson, Regulatory Solicitor, as to the background to Mr Kemp's application dated 19 August 2015 to list the Red Cow Public House as an Asset of Community Value. I attach at **APPENDIX 1 (2)** a copy of an email dated 20 August 2015 from the Chair of the South Hertfordshire branch of CAMRA confirming that Mr Kemp's application was made on behalf of the local branch.
- 6.2 In the light of the representations made by the parties concerning the boundary of the application site I have obtained a copy of the HM Land Registry Title for the land covered by the listing. I attach a copy of the Title Number HD296565 at **APPENDIX 1 (3)**.
- 6.3 I visited the site on 4 August 2016. I noted that the entrance to the area to the rear of the Red Cow public house had been fenced off. This area is shown in the photograph taken by Lyn Henny on 13 November 2015 at page 153 of the main Agenda. The Inspection report noted at page 142 that outside the pub is a car park used by patrons. The photograph at page 153 shows a hard-standing car park and car park spaces marked out with white lines and three parked cars. A subsequent photograph taken at a site meeting held between Paratrend and CAMRA on 29 April 2016 and contained at page XIV of the Supplemental Agenda dated 1 June 2016 shows this area to be unoccupied. The description attached to the photograph states "view of area of hard-standing not occupied by the Pub and legally separate from the curtilage of the Public House". At my request Judith Adamson sent an email to Mr Stell on 5 August 2016 asking him two questions:
1. Please can you clarify when the land marked in blue on the attached plan was fenced off restricting access to the car park? We note that this land was accessible when the inspections were carried out by officers prior to the original nomination (see the photographs and inspection sheet on pages 141-155 in the Agenda)
  2. What is the future intention regarding the use of the land?
- Copies of the exchange of emails between Judith Adamson and Mr Stell on behalf of the owner, Paratrend Limited, are attached at **APPENDIX 1 (4)**. In his substantive response dated 10 August 2016, Mr Stell provided an annotated plan on which he had marked historical land use, occupiers and boundaries, shaded in different colours. Mr Stell states that the area of land shaded red shown on the original CAMRA nomination and the Council's decision was erroneously included by CAMRA because a fence has been erected and houses had been built on it. He states that the land shaded blue on the plan

includes areas of land in separate freehold Titles that was never subject to the ACV and is part of the side garden path and rear garden of 165 Westfield Road. Mr Stell also comments in his email that following an agreement with the adjoining owner the land shaded red has been transferred to the developer of the adjoining land. Mr Stell states that the land shaded green had partial replacement fencing installed down the left hand side of the building during December 2015. He said that this fencing was required to prevent trespass by third parties on to the land shaded brown on the plan. During January 2016 a five bar gate was installed across the frontage of this land at its junction with Westfield Road to prevent a recurrence of trespass and fly-tipping. Mr Stell refers to the current HM Land Registry Title Plan that shows the boundaries of the Red Cow Public House which in the absence of better evidence from CAMRA or SADC has to be the basis of any ACV nominated site.

Mr Stell also refers to the SADC site inspection notes dated 13 November 2015 (pages 141-155 of the original Agenda). In the notes Lyn Henny states "This is a Public House which is open to the public during their opening hours. Outside the pub is a car park used by Patrons. There is also a seating area to the front of the pub and a garden and yard area to the rear. These areas have not yet been turned into public garden space but as it is winter and the pub has only just re-opened after being refurbished by the new tenant it is possible that this will be more of a spring/summer project."

6.4 Mr Stell comments that Lyn Henny's statement was based on an incorrect assumption that was not checked with the owners, nor with the tenant. He states that the rear area was not a car park and nor was it permitted to be used by Patrons. Signage present on site stated that the land was private and this land was not subject to any lease with the pub operator and is physically and legally separate as shown on the latest HMLR Title Plans. Mr Stell states that the extent of the pub demise was, and is, limited to the area of land shaded green on his plan. He goes on to say that for the Council to conclude that a potential renovation project for the land to the rear could in some form become "more of a spring/summer project" is wildly speculative at best and in our opinion is a totally inappropriate basis on which to make a decision for our building.

6.5 With regard to my question as to Paratrend's future intention regarding the use of the land to the rear of the pub, Mr Stell comments that it is a matter of public record that Paratrend applied to build on the land to extend the current structure. The application was rejected by the Council. Mr Stell states that they are exploring the potential to sell the land and have received several expressions of interest. Mr Stell also commented that in the absence of a decision regarding options to re-develop or sell it is likely that the land will remain derelict with partial vacant possession, fenced off to prevent trespass and fly-tipping. He concludes that it is the owner's preference for the ACV Nomination to be overturned entirely. In the alternative he submits that only the area of land shown on the current HMLR Plans as forming the "Red Cow Public House" can reasonably form the basis for an ACV Nomination and as such the ACV Nomination should be amended as appropriate.

6.6 On 21 September 2016 the Planning Inspector, Mr Jackson, issued his decision on Paratrend's appeal against the decisions of St Albans City and District Council to refuse to grant planning permission and to grant listed building consent for a rear extension, alterations and revised parking layout to the rear of the Red Cow Public House. The Inspector allowed the appeals and granted permission. A copy of the Inspector's decision is attached at **APPENDIX 1 (5)**. I also received further representations from Mr Stell on behalf of Paratrend Limited and Messrs Kemp and Strachan on behalf of CAMRA regarding the past and future use of the land the rear of the public house. These representations are contained in the emails referred to in Section 7 below.

## **7 My decision**

7.1 I have considered all the written representations submitted on behalf of the owner of the Red Cow Public House, Paratrend Limited, the Nominator CAMRA and the original decision maker Debbi White. In my view this review raises the following issues:

### **Issue 1**

Is the nomination a community nomination within the meaning of Section 89 (2) of the Localism Act 2011?

### **Issue 2**

Does the application meet the criteria of Section 88(1) or Section 88(2) of the Localism Act 2011?

### **Issue 3**

Is the area of land indicated on the entry on the Council's ACV register for the Red Cow Public House correct?

## **7.2 Issue 1**

### **Is the nomination a community nomination within the meaning of Section 89 (2) of the Localism Act 2011?**

Under Section 89 (1) of the Localism Act 2011 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 in response to a community nomination. A community nomination may be submitted by a person that is a voluntary or community body with a local connection. The Assets of Community Value (England) Regulations 2012 provide definitions of a community body. Under Regulation 5 (2) (e) a company limited by guarantee which does not distribute any surplus it makes to its members falls within a definition of a community body. Under Regulation 5 (2)(c) an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members also comes within the definition of a voluntary or community body. In order to qualify a community body has to demonstrate that it has a local connection with land in a Local Authority's area. Under Regulation 4 of the 2012 Regulations a voluntary or community body satisfies the test of local connection if its activities are wholly or partly concerned with the Local Authority's area. Also, any surplus which the body may make must be wholly or partially applied for the

benefit of the Local Authority's area or for the benefit of a neighbouring Authority's area.

- 7.3 In this case the application to nominate the Red Cow Public House as an Asset of Community Value was submitted by John Kemp, Membership Secretary, on behalf of the South Hertfordshire CAMRA (Campaign for Real Ale). In the nomination form Mr Kemp described South Hertfordshire CAMRA as a company limited by guarantee. He attached a copy of the Articles of Association of CAMRA (see pages 121-133 of the main agenda). The Articles list the objects for which CAMRA is established including paragraph d to promote and foster activities concerned with the consumption of good quality beer. Paragraph 9 provides that the number of members with which CAMRA has been registered is unlimited. Paragraph 4 of the Articles of Association provides that in furtherance of the objects listed in paragraph 2 CAMRA have power to establish and support branches whose objects are the same as the object of CAMRA and to supply or aid in the establishment and support of clubs or associations whose objects are sympathetic to the objects of CAMRA. Paragraph 5 provides that the income and property of CAMRA whencesoever derived shall be applied solely towards the promotion of the objects of CAMRA as set forth in these Articles, and no portion thereof shall be paid or transferred directly or indirectly, by way of a dividend, bonus or otherwise howsoever by way of profit to the members of CAMRA.
- 7.4 The nomination form submitted by Mr Kemp requests the Nominator to describe the organisation type. Six organisational types are listed on the nomination form. These include a company limited by guarantee and a voluntary community group. On the form Mr Kemp put a cross in the box next to 'company limited by guarantee'. In answer to the question "How many members do you have (this is particularly important for voluntary/community groups)". Mr Kemp answered 1,934.
- 7.5 There has been a recent First Tier Tribunal Decision dated 18 May 2016 which considered the procedure on community nominations – see the Decision of the First Tier Tribunal in Hamna Wakaf Limited v Lambeth LBC and CAMRA South West London (CR/2015/0026) at **APPENDIX 1 (6)**. In this case the CAMRA South West London branch nominated the Grosvenor Public House in Stockwell as an Asset of Community Value. On the nomination form the branch ticked that it is a company limited by guarantee and did not tick the box relating to an unincorporated body. The owner argued that the branch did not qualify as a company limited by guarantee because there was no evidence that CAMRA Limited had authorised the branch to make the nomination on its behalf. At the review stage Ms Linton, the Reviewer on behalf of the London Borough of Lambeth, had decided that although the evidence provided by the nominator did not suggest that CAMRA 'central' gave any particular sanction to the nomination of the Grosvenor Public House, the nomination was in all respects a community nomination given the number of residents who were members of the branch. Ms Linton concluded that CAMRA South West London branch was a qualifying unincorporated body within Regulation 5(1)(c). Judge Lane considered whether the CAMRA South West London branch qualified as a voluntary or community body on the basis that it was an unincorporated body even though the correct

box had not been ticked on the nomination form. In the Lambeth case the Nominator had stated that the South West London branch had 1,522 members of which 358 live in Lambeth. The Nomination form requested that if the organisation is an unincorporated body please attach the names and addresses of 21 members who are registered to vote in the London Borough of Lambeth. No such names and addresses were included with the nomination form. After reviewing the case law and legislation Judge Lane concluded that the reviewer Ms Linton was correct to find that CAMRA South West London branch qualified as a voluntary or community body within Regulation 5(1)(c). The reviewer had concluded, in effect, that it did not matter that the Branch or those acting on its behalf had thought that, in some way, it fell to be treated as a company limited by guarantee. Judge Lane considered that Ms Linton's approach was permitted by legislation. Regulation 6(d) of the 2012 Regulations properly construed enabled her to consider evidence not submitted at the time of the nomination which showed that at that time the Nominator was a body within Regulation 5(1)(c). Judge Lane considered that in determining whether the requirement in Regulation 5 (1)(c) (ii) is met in the case of the South West London branch the fact that CAMRA met this requirement may dispel any doubt that may exist as to whether the branch does so. The Judge rejected the Appellant's contention that CAMRA's branches cannot legally be distinguished from the Campaign for Real Ale Limited, for the purposes of Regulation 5. On the facts of the case the Judge considered that it was clear from materials before the reviewer especially the Model Branch Constitution and Internal Memoranda that the South West London branch had an identity as an organised group of people in South West London with the common functions described in the nomination form. The nomination form also specified that 358 members of the Branch lived in Lambeth. Judge Lane concluded that the Council was entitled, after the nomination was made, to seek additional evidence on the subject of the branch's eligibility to make a community nomination. That evidence resulted in material being supplied which put beyond any doubt that the Branch had at least 21 local members, registered as local government electors, as described in Regulation 4(3). In any event the Judge accepted a submission from Counsel for the local authority that in the light of the very large number of members specified in the nomination form it was more likely than not that at least 21 individuals fell within Regulation 4(3).

- 7.6 As the reviewer of the decision to list the Red Cow Public House as an Asset of Community Value I am satisfied that I may consider evidence not submitted at the time of the nomination as to whether the South Hertfordshire branch of CAMRA qualifies as a voluntary or community body within the meaning of Regulation 5. Regulation 6 (d) of the Assets of Community Value (England) Regulations 2012 provides that a community nomination must include evidence that the nominator is eligible to make a community nominator. Judge Lane in the case of *Hamna Wakaf Limited v The London Borough of Lambeth and CAMRA South West London branch* considered that on a true construction of the overall statutory scheme the local authority has discretion to waive a requirement in Regulation 6 where the authority reasonably concludes that no substantial prejudice would be caused. Furthermore, Judge Lane considered that a local

authority may permit a nominator to make good a failure under Regulation 6, following initial receipt of the nomination documentation. Judge Lane also found that an owner's right to appeal against an adverse decision resulting from a review to the First Tier Tribunal meant that an owner does not have a legitimate basis for contending that the validity of a nomination is to be construed on a strict and "once and for all" basis as regards each and every requirement, as at the date when the purported nomination was made. The Judge said that the process is designed to produce a robust conclusion on the merits regarding matters of substance, in particular, whether Section 88(1) or (2) is satisfied.

7.7 The nomination form submitted by Mr Kemp on behalf of South Hertfordshire CAMRA describes the organisation as a company limited by guarantee. However, the nomination did not include any evidence that the South Hertfordshire branch have authority to make the nomination on behalf of CAMRA. As indicated in 7.6 above, I consider that I may have regard to evidence not submitted at the time of the nomination to ascertain whether the application was made by a company limited by guarantee in accordance with Regulation 5(2)(e). I have asked Judith Adamson, the Council's Regulatory Solicitor, to make enquiries of CAMRA. I have been provided with a copy of the minutes of the CAMRA South Hertfordshire branch meeting held on 18 August 2015 at the Swan, Wheathampstead. The minutes record that the branch agreed that an ACV application should be made for The Red Cow (Harpenden). I have also been provided with a statement of support dated 5 October 2016 by Faye Grima, Campaigns Officer, CAMRA. Ms Grima states that in putting forward the application South Hertfordshire CAMRA branch was acting on behalf of and with the full authority of CAMRA – See **APPENDIX 1 (7)**. Whilst I have taken into account CAMRA's statement of support dated 5 October I consider that this statement should be interpreted as meaning that CAMRA wholly supports the nomination made by the branch and does not mean that CAMRA itself made the nomination. I find that following the Tribunal decision in the case of *Hamna Wakaf Limited v The London Borough of Lambeth and CAMRA South West London branch* that a correct interpretation of the legislation is that a CAMRA branch is a person which is an unincorporated body and therefore is a valid nominator. This is subject to the requirement for 21 local members. In this case I consider that the nomination was made by the South Hertfordshire branch of CAMRA even though on the nomination form Mr Kemp put a cross in the box next to 'company limited by guarantee'. I asked Judith Adamson to make enquiries of CAMRA as to the number of members of the branch who are registered as a local government elector in the St Albans District Council area. Ms Adamson has informed me that we received a list of names of members of South Hertfordshire CAMRA branch on 22<sup>nd</sup> December 2016. Ms Adamson has checked the register and can confirm that as at 19 August 2015 there are at least 21 individuals who are members of the South Hertfordshire CAMRA branch who are registered as local government electors. On the basis of the *Hamna Wakaf Limited* decision a local authority is entitled to take into account evidence provided subsequently in order to determine the state of affairs as at the date of the nomination. I also have to consider whether the CAMRA branch distributes

any surplus it makes to its members. Paragraph 5 of the Articles of Association of CAMRA which were attached to the nomination form provides that the income and property of CAMRA shall be applied solely towards the promotion and the objects of CAMRA and that no portion thereof shall be paid or transferred directly or indirectly by way of profit to the members of CAMRA. I am satisfied that this shows that the CAMRA branch does not distribute any surplus it makes to its members. I am also satisfied that the activities of the South Hertfordshire CAMRA are wholly or partially concerned with the St Albans District Council area (see Branch Minutes dated 16 June 2015). **APPENDIX 1 (8)**. These minutes refer to an ACV Application for the Camp Public House, St Albans and experiences of members with the King Offa Public House, St Albans. The minutes also contain news on various pubs in the St Albans District and mention branch meetings to be held at the Lower Red Lion, St Albans, The Swan, Wheathampstead, The Six Bells, St Albans and the Rose and Crown, Sandridge. All of these pubs are located in the St Albans District. In summary, whilst the nomination was deficient because Mr Kemp ticked the Company Limited by Guarantee box on the nomination form I find that, applying the decision in Hamna Wakaf Limited, the correct analysis is that the nomination was made by the South Hertfordshire branch of CAMRA as an unincorporated body, which on the evidence now available meets the 'local connection' requirement. I am satisfied that the nomination meets the requirements of Regulation 5 (1)(c) of the 2012 Regulations. I therefore consider that it is a valid community nomination within the meaning of Section 89(2) of the Localism Act 2011.

## 7.8 **Issue 2**

### **Does the application meet the criteria of Section 88(1) or Section 88(2) of the Localism Act 2011?**

In order for the Red Cow Public House to qualify as an Asset of Community Value it must satisfy either the present and future conditions in Section 88 (1) of the Localism Act 2011 or the past and future conditions in Section 88 (2) of the Act. At the time of her inspection on 13 November 2015, Ms Henny noticed that the Red Cow Public House was open and that outside of the pub there is a car park used by patrons. Ms Henny also noticed that there is a seating area to the front of the pub and a garden and yard area to the rear. When she visited the pub it was open and had twelve customers. Ms Henny noted that there was a large screen TV in the pub and a varied food menu. In her inspection report Ms Henny considered that the pub was warm and friendly and fulfilled the requirements as an Asset of Community Value. Attached to her inspection report are photographs showing customers using the public house (see pages 144 and 145 of the main agenda). At page 153 there is a photograph of a car park at the rear of the public house showing three cars parked in the car park. The photograph at page 147 also shows a small parking area at the front of the Red Cow Public House adjoining Westfield Road. In her Decision notice dated 8 December 2015 Debbi White, the original Decision maker, sets out her reasons for her decision to list the Red Cow Public House as an Asset of Community Value. Ms White noted that the property has been refurbished to a good standard and had recently been purchased by a company that had granted a 5

year tenancy for publicans to run the public house. Ms White referred to the conversation between Ms Henny and the publican who had informed Ms Henny that the opening night had 200 people and that quiz nights would take place at the pub. Ms White also noted that there was a car park and seating at the front of the pub. In his appeal against Ms White's decision Mr Stell on behalf of the owner Paratrend Limited disputes that the Red Cow pub fulfils the ACV criteria. Mr Stell's representations on behalf of Paratrend Limited are recorded at Sections 3 and 6 above. He states that there is no evidence to suggest that the community uses the pub for social functions and that it is not a village pub that is in the heart of the community because it is located in a housing estate close to the town centre. Mr Stell also refers to a report from Drake and Company dated 30 September 2015 which indicates that the beer sales volume over recent years has been very low for a tired pub. Mr Stell also contends that the tenant of the Red Cow Public House trades entirely within the confines of the red line boundary of the lease plan (See the plans at pages VIII, IX and X of the Supplemental Agenda dated 1 June 2016). He states that the areas outside the lease demise are used for non-public house purposes and as such it is not appropriate for these areas to form part of any ACV. Mr Stell also says that a site inspection will show that the area of land outside the lease demise is currently used for builders' storage. In his letter dated 24 March 2016 to Judith Adamson Mr Stell says that he has been advised that the nomination is invalid on the basis that an ACV Nomination cannot extend to cover a wider freehold site that is not part of the operation of the pub and which is now used by third parties who have rights over it. He also points out that the Council's inspection of the operating business was shortly after the re-launch when trade was brisk. He states that trade is now of a more moderate level which can be witnessed at any night and day time. Mr Stell comments that the planning application shows the potentially wider boundaries which the CAMRA nomination prematurely encompasses in the current nomination. He also observes that the non-pub controlled land is the subject of a legal dispute. In her response dated 22 February 2016 to the Paratrend's appeal Ms White comments that the fact that the owners have granted a 5 year leave and the tenant is required to use it as a pub for 5 years supports a presumption that it is realistic to consider that the use as an Asset of Community Value will continue in the future. Ms White also argues that the financial viability of the pub is not relevant to the question of whether the asset has furthered the social well-being or interest of the community. In response to Mr Stell's statement that there is no evidence to suggest that the community uses the pub for social functions and is not a village pub, Ms White comments that it is not necessary for an asset to be in the heart of a community for it to meet the listing criteria. Ms White contends that by providing a meeting place where the local community can socialise, eat food and partake of social events such as games, music and TV the pub meets the criteria. Mr Defriez on behalf of the South Hertfordshire branch of CAMRA has submitted representations in response to Paratrend's appeal. His representations are summarised in Section 5 above. Mr Defriez refers to the services provided by the pub which he contends further the social well-being and interests of the local community. He mentions

the fact that the pub provides a beer garden, a great food menu and games. Mr Defriez challenges the viability evidence put forward by Paratrend Limited. With regard to the boundary of the site nominated by CAMRA, Mr Defriez encloses an email dated 24 March 2016 from Robert Strachan of CAMRA to Mr Stell of Paratrend. In this email Mr Strachan notes that as part of Paratrend's planning application they provided a site location plan identifying the boundary of the site with a red outline. Mr Defriez also attaches a letter from Mr Strachan to Judith Adamson dated 12 January 2016 which states that the ACV nomination was based on the boundary held by HMLR and that the surrounding land is part and parcel of the viability of the pub in terms of the car parking availability. It appears from Mr Stell's letter dated 10 August 2016 that public access from Westfield Road to the area of land to the side and rear of the public house was prevented during January 2016 where a five bar gate was installed across the frontage of the land (shaded brown on the plan - figure 1 in Mr Stell's letter) with Westfield Road to prevent an occurrence of trespass and fly-tipping. Mr Stell also states that the rear area was not a car park and the patrons were not permitted to use it. He states that the extent of the pub's demise was and is limited to the area of land shaded green in the plan attached to his letter. Mr Stell also refers to an accident when a trespasser crashed a car over a timber barrier placed across the entrance of the land shaded brown on figure 1. Mr Stell also says that signage present on the site states that the land to the rear and side was private and was not subject to any lease with the pub operator and is physically and legally separate as shown on the latest HMLR Title plans. In an email dated 22 November 2016 to Ms Adamson, Mr Stell submitted that the current nomination must be treated as invalid on the basis that it related to a site that was far greater than the pub operation, was partly in third party occupation and included land which had been transferred to residential users, all of which had been agreed by the nominator. **APPENDIX 1 (9).**

7.9 In carrying out this review I consider that I may deal with the public house (namely the land subject to the lease to the pub tenants) and the adjacent site to the side and rear separately under Section 88(1) and Section 88(2) respectively. I reject Mr Stell's submission that the current nomination must be invalid on the basis that it sought the listing of the whole site instead of just the public house. I consider that under Section 88 I may apply both sub-sections to different parts of the same site. I am satisfied that The Red Cow Public House was open at the time of the decision to list it on 8 December 2015. I consider that there is clear evidence of use of the public house for social events such as cribbage and quiz nights. Also in my view use of the pub by the local community as their local encourages friendship, conversation and social interaction. The photographs of the interior of the public house at pages 144 and 145 of the main agenda clearly show patrons consuming drinks and eating meals. A TV screen can be seen on the wall of the public house in the photograph at page 145. I also note that the publican advised Ms Henny that they intended to run quiz nights starting in December 2015. It therefore appears to me that the Red Cow Public House is used by the local community as a meeting place and for social interaction and its use furthers the social well-being or social interests of the local community. It

therefore meets the requirements of Section 88 (1) (a) of the Act. I do not consider that issues over the viability of the pub are relevant as the pub was at the time of Ms Henny's visit open as a pub and continues to trade as a public house to this day.

7.10 In order to satisfy the future condition at Section 88 (1) (b) I have to decide whether it is realistic to think that there could 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 community. It is clear from the evidence that Paratrend Limited has granted a 5 year lease to a tenant of the public house and land. I am satisfied on the evidence that it is realistic to think that the Red Cow Public House can continue to be used as a public house for uses that will further the social interests of the community. I therefore consider that the test in Section 88 (1) (b) is met in respect of the building and land subject to the lease to the pub tenancy. Accordingly, I consider that the tests in Section 88(1)(a) and(b) have been met and that the public house should remain on the list of community assets.

7.11 I now turn to the area of land to the side and rear of the public house. This area is excluded from the lease to the pub tenants. Ms Henny took photographs of this area when she visited the site on 13 November 2015. White lines marking out car parking spaces are clearly visible in the photographs and cars are parked in the car park. From the photographs it appears there is no restriction placed on public access to this land. However, the photographs attached to the Supplemental Agenda dated 1 June 2016 at page XIV show that whilst a small car park was created and fenced off to the rear of the public house, the majority of the land to the rear is not currently in use as a car park. It would appear from Mr Stell's letter dated 10 August 2016 that public access to the land at the rear of the public house was prevented by the erection of a barrier in or around January 2016. Mr Stell states that the lease to the tenants of the Red Cow Public House is limited to the land shown hatched green on the plan included in his letter dated 10 August. Indeed, in his letter Mr Stell states that the areas of the land shaded brown to the side and rear of the public house had been occupied by a trespasser for at least 15 months prior to CAMRA's nomination. However, this is not apparent from the photograph taken by Ms Henny when she visited the site on 13 November 2015. Judith Adamson, Regulatory Solicitor, on my behalf, sent an email to Mr Stell on 29 September 2016. Her email and Mr Stell's response dated 29 September is attached at **APPENDIX 1 (10)**. Mr Stell's attention is drawn to the photograph taken by Ms Henny showing cars parked in the area to the rear of the public house. Mr Stell was asked for evidence in support of his point that the land to the rear was not used as a car park. In his response Mr Stell agrees that cars were parked in the area to the rear. However, he stated that they were illegally parked and were a source of continued nuisance to Paratrend over many months. Mr Stell states that in addition to the illegal occupation of Paratrend's land by the adjoining owner (Ridgepoint) they suffered illegal car parking and fly-tipping. Mr Stell states that at around the time of the Council's inspection in November 2015 Paratrend blocked off the road access onto the land at the rear after someone had driven over a 400mm high timber

barrier which they had placed across the entrance with Westfield Road. Mr Stell states that the presence of cars shown in the photograph is not indicative of anything other than the illegal parking of cars and is wholly unrelated to the use and operation of the public house. Mr Stell also draws attention to CAMRA's concession that the land which they originally nominated for ACV status included areas of land that now is neighbouring gardens. He points out that the plan produced by CAMRA dated 3 May 2016 [reproduced at Section A (II) (b) of his letter dated 10 August 2016] indicates that CAMRA's original application was for a site that was materially inaccurate. In his letter dated 10 August Mr Stell reproduces a plan at Figure 2 which shows a red line boundary as amended by CAMRA which indicates the correct boundaries of the land owned by Paratrend Limited. In an email dated 4 October 2016 Mr Kemp comments on Mr Stell's email dated 29 September 2016. Mr Kemp states that CAMRA's ACV nomination in August 2015 was based on the land boundary owned by Enterprise Inns. He says the boundary map submitted was as per supplied by the Land Registry at the time. Mr Kemp maintains that in the absence of any outstanding boundary dispute or pending boundary revisions at the time of the ACV application any boundary revisions by Paratrend should only come into scope upon a new ACV application.

- 7.12 Judith Adamson invited comments from CAMRA on the issue of the use of the land to the rear of the public house. In an email dated 2 October 2016 Mr Kemp stated that the car park was used in previous years and he had utilised it several times himself when delivering CAMRA festival publicity and newsletters. In more recent years Mr Kemp said it was not utilised and was neglected by the previous landlord. He states that towards the end of the previous landlord's tenure under Enterprise's ownership only a small number of local people used to go to the pub by foot. Mr Kemp said he definitely used the car park whilst on CAMRA delivery rounds until the early 2000s. In his email dated 5 October 2016 Mr Stell states that the email from John Kemp of CAMRA helpfully confirms the position of the land to the rear over the last 26 years i.e. that it has been abandoned since the 1990s. Mr Stell asserts that neither Mr Kemp's email nor anything else submitted by CAMRA suggests that the boundary of the Red Cow pub should be anything other than the HMLR boundary shown very clearly on the Land Registry plans. He submits that the current CAMRA nomination cannot stand because the site they nominated in August 2015 included areas of land that were not within any part of the site boundaries at that time, and are which are now (by agreement of all parties) residential back gardens. Further, Mr Stell states that only the smaller site marked up on the HMLR plans as being "The Red Cow" could ever have been correctly nominated. In an email dated 4 October 2016 Mr Kemp states that at the time of the ACV application last August the Red Cow and its land boundary thereof was owned by Enterprise Inns. He said that the boundary map submitted was as per supplied by the Land Registry at the time. Mr Kemp states that he is not in a knowledgeable position to comment on boundary revisions submitted by Mr Stell but contends that if there is any evidence of any border dispute then consideration for revision should be taken under this context only. Mr Kemp considers that in the absence of any outstanding boundary dispute or

any pending boundary revisions by the date of the ACV acceptance should only come into scope under a new ACV application. See **APPENDIX 1 (11)**.

- 7.13 On 11 October 2016 Mr Strachan on behalf of CAMRA commented in reply to Judith Adamson's email dated 29 September regarding the use on the land to the rear of the public house. Mr Strachan states in his email that when the pub was owned by Enterprise he saw cars in the rear car park. Mr Strachan says that he has visited the pub since it re-opened in September 2015 and has passed it at other times. He has not observed any signage either indicating that there is a car park or stating that the car park is out of bounds to patrons to the pub. He first noticed the physical barrier at the entrance with Westfield Road around December 2015 and January 2016. Mr Strachan considers that an area accessible from the road that is on the pub's land is taken to be provision for the pub's patrons. Mr Strachan goes on to say that he is aware from discussion with Mr Stell that the lease for the new tenants is only applicable to the public house and a small area surrounding it and does not apply to the rear car park. He says that there is nothing to suggest any change of use to the land from car parking associated with the Red Cow to private land held by Paratrend. Mr Strachan also comments on Mr Stell's statement that CAMRA has conceded a revised pub border. Mr Strachan says that he attended the site and was shown where the surrounding developers had chopped off land that differed from that registered to the pub. He understands the point of view that the original ACV border was not aligned to the actuality. However, he states that this is entirely linked to the border dispute between Paratrend Limited and the housing developers. Mr Strachan states that the CAMRA branch decision was to stick with the original ACV submission with no changes.
- 7.14 The use of the land to the rear of the public house was also addressed in the planning appeal statement dated May 2016 by Aitchinson and Raffety, Chartered Town Planning Consultants submitted to the Planning Inspectorate in support of Paratrend's refusal of planning permission and listed building consent for the construction of a rear extension, alterations and revised parking layout. - see **APPENDIX 1 (12)**. The statement prepared by Mr Hayden Todd refers in a number of places to the land to the rear of the public house. In paragraph 1 Mr Todd includes a site plan of the appeal site. In paragraph 2.4 he describes the area directly surrounding the public house as largely covered in hard standing surfaces and used for either parking or outdoor drinking/dining. He also goes on to refer to an area of scrub land and gravel behind the public house which has recently been cleared by the freehold owners to enable this land to potentially be utilised by the public house. Mr Todd states that it was previously derelict and given its poor condition has not been used in connection with the operation of the public house for a number of years. There is a plan of the proposed extension at paragraph 3.5 which shows the extension situated on part of the land to the rear of the public house. In paragraph 6.20 Mr Todd states that until approximately 10 years ago the land surrounding the Red Cow was used for parking and as a garden bar. In paragraph 6.31 he states that the Red Cow is a village pub that serves a local community. Mr Todd says that the majority of customers walk to the site from the surrounding residential streets. He says that the site previously

contained a reasonably large parking area that fell into a state of disrepair, which was almost certainly due to a lack of use. Then in paragraph 6.32 Mr Todd states that the application site has an existing under-utilised parking area to the front, side and rear. He says that the proposed development would retain the parking to the front and side and that the parking to the rear could be upgraded and reconfigured in a more formalised layout. He also notes that the proposal would provide 20 parking spaces to serve the enlarged public house. In his decision letter dated 21 September 2016 the Inspector describes the appeal site as benefiting from a relatively large area of land to the rear, currently vacant and largely covered in gravel and other hard materials. (See paragraph 8 of the decision letter). In paragraph 9 of the letter the Inspector comments that much of the existing rear area is neglected already covered with concrete and gravel and has been for many years.

7.15 Mr Stell on behalf of Paratrend Limited has commented on Mr Strachan's email dated 11 October. In his response dated 11 October - See **APPENDIX 1 (13)**. Mr Stell states that he is disappointed that Mr Strachan describes the evidence as incredulous. Mr Stell refers to a photograph attached to his email showing the damage to the timber barrier. He says that the damage was reported to him by a person working in the pub who requested that the barrier be replaced because it was not serving its purpose. Mr Stell states that Paratrend had fixed the fence in response to the request. Mr Stell disagrees with Mr Strachan's comments. He states that the land at the rear is not "on the pub's land". Mr Stell says that this land is legally separate and that any parking by patrons of the pub, neighbours, third party visitors or tradesmen was a problem which Paratrend had to deal with. Mr Stell comments that they have done this with a clear and semi-permanent solution to protect the public from land which is unsafe and to prevent further trespass and fly-tipping.

Mr Stell comments that other adjacent neighbouring land is also owned by Paratrend Limited. He refers to Part A (i) (page 2) of his letter dated 10 August 2016 to the Council which shows the non-contested site boundary layout as at today's date. He says that by Mr Strachan's logic all adjacent land without a physical boundary is suitable for inclusion within the ACV nomination. However, Mr Stell asserts this cannot be correct because the other non-ACV nominated strip of land shown hatched blue on the plan shown on page 2 of the 10 August letter also has no fence barriers and/or signage but was not nominated by CAMRA. In short, Mr Stell states that CAMRA's actions do not support the latest argument put forward by Mr Strachan in his email dated 11 October. Also he says that Mr Strachan's position is highly selective, designed to suit his various requirements, implausible and bearing little or no relation to the actual boundaries of the pub as shown in the HMLR plans. Mr Stell says that these plans accurately record the enclosed boundary of the Red Cow Public House in a far more legally binding form than the random approach of Mr Strachan. Mr Stell also comments on the statement by Mr Strachan that "in my opinion illegal parking could only be enforced with clear signage stating the rear area accessible by car is expressly out of bounds". Mr Stell says that this opinion is simply not the law. He says that the remedy of a civil action in trespass is

available whether or not signage is present. In the case of the Red Cow Mr Stell states that before the barrier was erected Paratrend made a polite verbal request not to park on the land.

Mr Stell states that Mr Strachan has the boundaries wrong in respect of both the larger boundary to the North East and North West. He says that Mr Strachan had agreed on site and by his email that parts of the larger nominated site were now partly occupied by the adjoining houses. Mr Stell says that Mr Strachan also agreed that the boundary of the Red Cow was wrong. Mr Stell contends that Mr Strachan's comment had no legal basis and to effectively suggest that Paratrend had fabricated a car crashing over a timber barrier is libellous.

Mr Stell says that Paratrend Limited are pleased with Mr Strachan's statement that "I could see the point of view that the original ACV border was not aligned to the actuality". Mr Stell queries whether this is now sufficient for the Council to immediately reject CAMRA's original nomination because taken with Mr Strachan's email dated 3 May 2016 he has conceded that the original nomination was wrong.

Mr Stell states that if the Council wishes him to do so he is willing to track down the person who reported the car that crashed over the timber barrier and provide a statutory declaration and witness statement. Mr Stell considers that Mr Strachan is behaving in a vexatious manner. In summary, Mr Stell requests that a decision is reached on the appeal as soon as possible.

- 7.16 I therefore have to consider whether Section 88 (2) of the Act applies to the land to the side and rear of the public house. This provides whether 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 well-being or interests of the local community. The term 'recent past' is not defined in the Localism Act 2011 or any relevant subordinate legislation. However, the term has been considered in Tribunal decisions concerning appeals against listings of Assets of Community Value. In the case of *Crostone Ltd v Amber Valley BC* (CR/2014/0010) Judge Peter Lane stated that what constitutes "the recent past" would depend upon all the circumstances of a particular case. He said to that extent the expression is a relative concept. The latest case which considered the definition of the recent past was a Tribunal decision dated 22 July 2016 entitled *Jane Carol King v Chiltern District Council and Great Missenden Parish Council* (CR/2015/0025) - see **APPENDIX 1 (14)**. This case concerned the listing of the Pheasant Inn at Ballinger in Buckinghamshire which had served the local community without interruption from the middle of the 19<sup>th</sup> century until 2008. Mrs King had purchased the pub in May 2006. She opened an upmarket restaurant on the site with the pub business run in parallel. The venture was not a success and in November 2008 the entire business closed. She appealed to the Tribunal against the decision of Chiltern District Council to refuse her request for a review of their decision to include the pub in their list of Assets of Community Value. As part of his decision Judge Anthony Snelson considered the meaning of "the recent past". Judge Snelson agreed with the view of Judge Peter Lane in the *Crostone* case. He considered that, in context, a 7.5 year period between

November 2008 and July 2016 should be regarded as falling in the recent past. (See paragraph 34 of the Decision).

From the evidence before me it is clear that there is a dispute as to the use of the land to the side and rear of the public house. Paratrend Limited purchased the Red Cow Public House from its previous owners, Enterprise Inns, on 21 September 2015. In an email to Judith Adamson, Regulatory Solicitor, dated 23 February 2016 Mr Stell states that the areas outside of the lease demised to the public house tenants are used for non-public house purposes. He states that the area of land outside the lease demise is currently used for builders' storage (see page 165 of the main agenda). In a marked plan attached to the Supplemental agenda dated 28 April 2016 supplied by Mr Stell the area to the rear of the public house is described as "former redundant waste ground and informal car park for 4 no vehicles at the rear of public house. Not demised to Public House tenant". In his letter dated 29 September 2016 Mr Stell repeats that the the presence of cars on land to the rear of the pub is not indicative of anything other than the illegal parking of cars. Ms Henny took photographs when she inspected the site on 13 November 2015 which showed cars parked in the land to the rear of the public house – see photographs at pages 149 and 153 of the main agenda. The photograph at page 153 shows that at that time there was no barrier to physically prevent access to the land to the rear of the public house. Mr Stell in his letter dated 29 September, 2016 states that the cars shown in the photograph were parked there illegally.

- 7.17 In his statement to the Planning Inspectorate dated May 2016 Mr Todd on behalf of Paratrend Limited states at paragraph 6.20 that until approximately 10 years ago the land surrounding the Red Cow was used for parking and as a garden bar. He states at paragraph 6.31 that the parking area fell into a state of disrepair which was almost certainly due to a lack of use. In paragraph 6.32 Mr Todd states that the planning application site has an existing under-utilised parking area to the front, side and rear. He goes on to say that the parking to the rear could be upgraded and reconfigured as part of the planning application. In his letter dated 10 August 2016 Mr Stell states that the rear area was not a car park and was not permitted to be used by patrons. He states that in January 2016 a five-bar gate was installed across the road frontage at the junction with Westfield Road to prevent a reoccurrence of trespass and fly-tipping following an accident when a trespasser crashed a car over a timber barrier.
- 7.18 Mr John Kemp who submitted the ACV nomination on behalf of CAMRA was invited to comment regarding the use of the land to the rear of the public house as a car park. He states that he used it several times whilst delivering CAMRA publicity until the early 2000s. However, in recent years he says that the car park was neglected by the previous landlord, Enterprise Inns. Mr Strachan, on behalf of CAMRA, has also submitted representations. He says in an email dated 11 October 2016 that when the pub was owned by Enterprise he has seen cars in the rear car park. He also says that since the pub re-opened in September 2015 he has not seen any signage either indicating there is a car park or expressly stating that the car park is now out of bounds to patrons at the pub. He confirms seeing a 400mm square wood beam at the entrance with Westfield

Road. Mr Stell, in his email dated 5 October 2016, says that Mr Kemp's email of 2 October 2016, confirms that the land to the rear had been abandoned since the 1990s. Further, in his email dated 11 October 2016, Mr Stell disagrees with the statement by Mr Strachan that the land at the rear is "on the pub's land". He describes the land as being legally separate. He says that parking by pub patrons, numerous neighbours, third party visitors and tradesmen for the locality was a problem which Paratrend as owners of the site had to deal with. He says that they did this by initially making polite verbal requests not to park on the land and then by the installation of a physical barrier.

Following Mr Stell's email I sought clarification from CAMRA regarding the use of the land for parking. In an email dated 21 October 2016 to John Kemp, Robert Strachan states that he saw cars in the car park when he passed the Red Cow Public House on the 657 bus travelling between Wheathampstead and Harpenden. Mr Kemp is not able to give specific dates but says he used the bus several times each month during the period between 2011 and 2014 and the majority of times observed a few cars in the car park. Mr Kemp also states that he delivered a CAMRA magazine called "Pints of View" to the Red Cow Public House since 2003 and observed cars parked as he walked past the pub on dozens of times. **APPENDIX 1 (15)**. In her email dated 22 November 2016 Ms Adamson sought clarification from Mr Stell as to his position regarding the use of this land for car parking. Ms Adamson asked Mr Stell whether he accepted (a) there was some level of car parking going on until at least November 2015 (when the photos were taken on the site visit by Ms Henny), and (b) that such parking was connected to the pub (i.e. it was pub patrons who were in fact parking there, even if they did not have permission to do so). Mr Stell responded on the same day. In answer to point (a) Mr Stell agreed that there was some car parking until November 2015. He said that Paratrend allowed neighbours to park there and had builders and workmen parking there throughout this period. He says that any vehicles on the land would have been Paratrend's, their servants or agents or neighbours parking nearby. With regard to point (b) Mr Stell did not accept that the parking was connected with the pub. Mr Stell states that the burden of proof rests with the nominator to show that the cars allegedly parked there related to the pub. He says that the best that they can offer is pure speculation. Mr Stell states that the land was and remains private and was not (and is not) available for public use or for the pub use. Mr Stell points out that the pub patrons have always had use of the seven parking spaces at the front of the site although since March 2016 the car park has been relocated to the small patch of gravel within the lease plan at the back.

- 7.19 I have carefully considered the representations made by Debbi White, the original decision maker, Mr Stell on behalf of the owner and by Messrs Kemp, Strachan and Defriez on behalf of the nominator. I consider that on the facts of this case the recent past should be interpreted as meaning the last two to three years. Mr Kemp says that he used the car park several times until the early 2000s whilst delivering CAMRA publicity but in recent years acknowledged that the car park was neglected by the previous landlord. Mr Strachan says in his email dated 11 October 2016 that when the pub was owned by Enterprise he saw cars in the

rear car park. However, in my view this is not sufficient evidence to establish that the cars were owned by patrons visiting the pub. In his email dated 21 October 2016 Mr Strachan says that he saw cars in the car park when he passed The Red Cow Public House on the 657 bus several times each month between 2011-2014. He also recalls observing cars in the car park when delivering a CAMRA magazine to the pub. The nominator has not provided me with any evidence from patrons that they regularly used the land to the rear to park their cars when visiting the pub. There is also the statement by Mr Todd from Aitchison and Raffety made to the Planning Inspectorate. He says that the land to the rear was previously derelict and has not been used in connection with the operation of the public house for a number of years. He also states that the parking area fell into a state of disrepair. Mr Stell, in his email dated 22 November 2016 to Judith Adamson acknowledges that some car parking took place on the land to the rear until November 2015. However, he says that these cars were those of neighbours, builders and workmen who were given permission to park there by Paratrend Limited. Whilst I note that Ms Henny's photographs taken on 13 November 2015 show three parked cars in the area to the rear of the public house these photographs do not establish that the cars were those of pub patrons. I am not satisfied that on the balance of probability of the evidence supplied to me that the land to the rear and side of the Red Cow Public House has been used for parking by pub patrons in the recent past. Accordingly, I find that the test in Section 88(2) of the Act has not been met in respect of the land to the side and rear of the public house.

#### 7.20 **Issue 3**

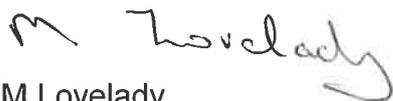
##### **Is the area of land indicated on the entry on the Council's ACV register for the Red Cow Public House correct?**

The land included on the register is shown enclosed within a red line on the plan attached to the Decision notice dated 10 December 2015. (Please see plan attached at page 140 of the Main Agenda). After some debate between the Nominator, CAMRA and Mr Stell on behalf of the owner Paratrend Limited it now appears to be common ground that a portion of the area indicated on the register is not in fact within the curtilage of the public house. Mr Stell has submitted an email [APPENDIX 1(16)] referring me to the Tribunal decision of *New River Trustee 7 Limited and Another v Wyre Forest DC (CR/2015/0013)*. I have considered this decision.

- 7.21 The Title of the land owned by Paratrend Limited was amended following negotiations between Paratrend Limited and adjoining owners. An official copy was issued by the Land Registry on 1 September 2016 shows amended boundaries to Paratrend's Title No HD296565. The revised Title Plan reflects a boundary agreement dated 19 May 2016 made between Paratrend Limited and Petal Homes LLP. All of the area shown within the red line is owned by Paratrend Limited. The Council has the power under Regulation 2 of the Assets of Community Value (England) Regulations 2012 to amend the entry shown on the register for the Red Cow Public House. I consider that the Council can remove from the register that part of the currently listed area which should not be

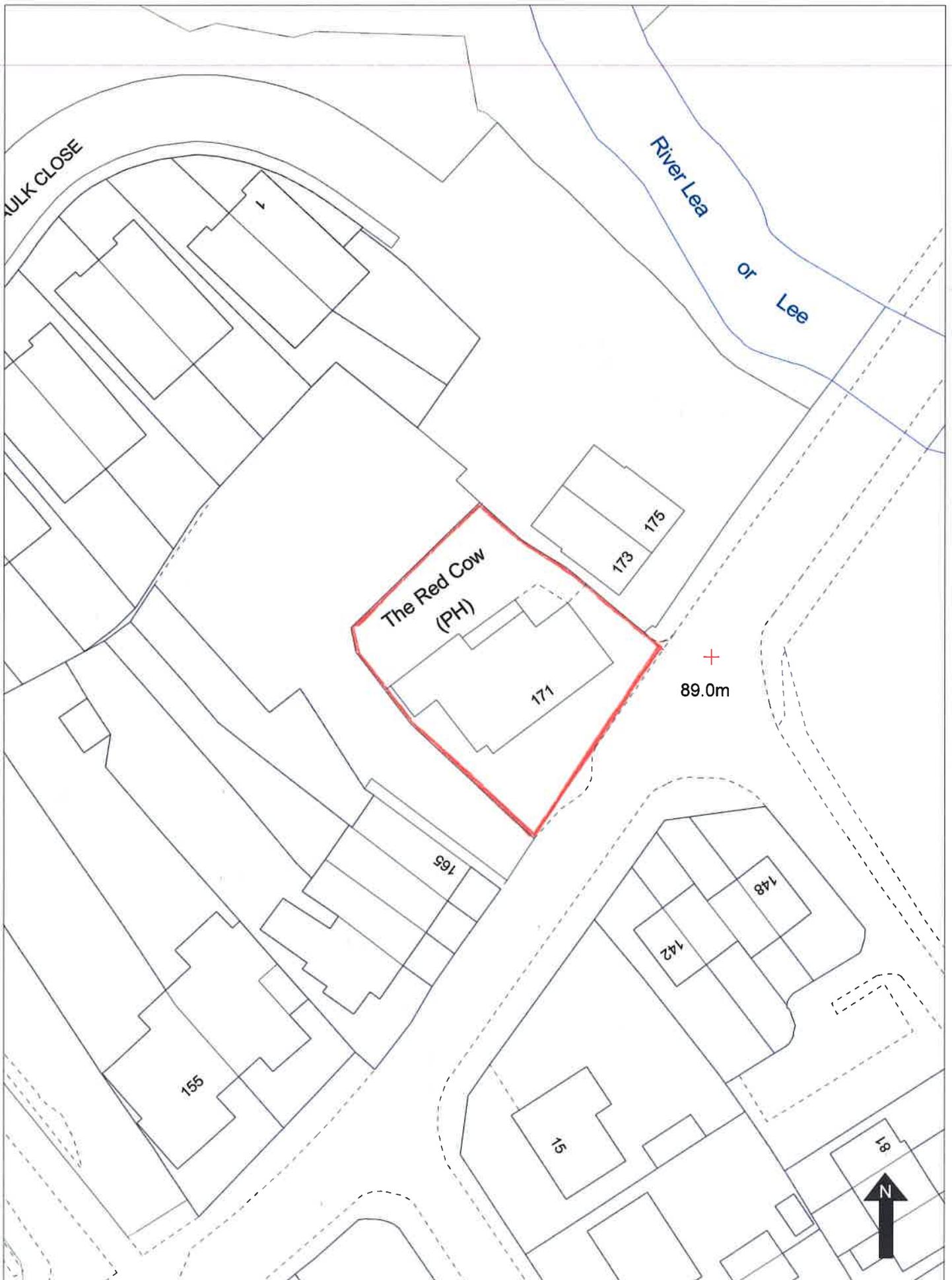
there because it is now outside the curtilage area of the public house. Under Issue 2 above I have found that the public house and its curtilage which is the subject of the lease from Paratrend Limited to the public house tenant should continue to be included in the list of Assets of Community Value. The remaining part of the site namely the land to the side and rear of the public house does not in my view qualify for listing. Accordingly, I amend the listing plan to show the public house and its immediate curtilage. I attach a plan showing the revised area of land to be included on the Register of Community Assets. **APPENDIX 1 (17)**

- 7.22 For the reasons outlined above it is my decision that the property known as the Red Cow Public House should continue to be included in the Authority's list of Assets of Community Value subject to my amendment to the listing plan. Paratrend Limited may appeal this listing review decision to the First-Tier Tribunal.



M Lovelady  
Head of Legal, Democratic and Regulatory Services

24 February 2017



**The Red Cow Public House, 171 Westfield Road, Harpenden**

Date: 30/11/2016

Scale: - 1:500





On 2 Dec 2015, at 18:57, Debbi White <[Deborah.White@stalbans.gov.uk](mailto:Deborah.White@stalbans.gov.uk)> wrote:

Pat

I expect the decision to be sent out before Christmas.

For your information although it is often what spurs on the community to nominate an asset we do not base our decision on whether a pub is failing or likely to be developed. In reality, a successful pub is more likely to meet the criteria to be listed - you might want to look back at some of our past decisions, which are on the Council's website. In particular, the King Offa and the King Harry. You might also be interested in the decisions on the Rats Castle and the Camp (the Camp is going to review in January)

It is not only pubs that can be listed as Assets of Community Value - we have listed playing fields for example, but not the former cottage hospital in Harpenden or the SPEC centre in London Colney.

You might be interested in some of the reasoning on the other decisions which is in line with the requirements of the Localism Act. In order to be listed, an asset must meet the criteria - whether it is likely to be developed is not one of them - what is important is (broadly paraphrased - for exact definitions please refer to the guidance) that it now or at some time in the recent past its use furthers the social wellbeing or social interests of the local community and that it is realistic to think the use can continue.

Regards

Debbi



---

**From:** Pat Stell  
**Sent:** Wednesday, 2 December 2015 17:58  
**To:** Debbi White  
**Cc:** Lyn Henny  
**Subject:** Red Cow- ACV Nomination

Dear Debbie

Further to the emails below, do we have any news on the date for the outcome of this Nomination and the timetable for the appeal (if required)?

We have spoken with CAMRA who advise that their Nomination was based on the mis-guided assumption that the pub would be redeveloped. I trust that this is not now a risk factor in the eyes of SADC, but if you need further info I would be delighted to meet with you and the Nominators on site at any stage. I attach a further copy of our correspondence dated 1.10.15 for reference.

Please note our change of email.

Many thanks.

Patrick Stell

Pat Stell MSc MRICS  
Chartered Building Surveyor  
Solicitor  
Chartered Building Surveyor  
Non-practising Law Society Member  
Redplan Asset Management

T: 01582 346243

**From:** [REDACTED]  
**Subject:** Red Cow Harpenden - ACV Nomination  
**Date:** November 16, 2015 at 2:01 PM  
**To:** "Debbi White" Deborah.White@stalbands.gov.uk

---

Thanks very much.  
Patrick Stell MSc MRICS  
Chartered Building Surveyor/Solicitor  
Non-practising Law Society Member  
Director, Redplan Asset Management  
Unit 5, 40 Coldharbour Lane, Harpenden, AL5 4UN  
E: [REDACTED]  
T: 01582 346243  
M: 0 [REDACTED]  
W: [www.redplan.co.uk](http://www.redplan.co.uk)

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**From:** Debbi White [<mailto:Deborah.White@stalbands.gov.uk>]  
**Sent:** 16 November 2015 14:01  
**To:** 'Pat Stell'; Lyn Henny  
**Subject:** RE: Red Cow Harpenden - ACV Nomination  
Pat

I will be aiming to do this within the next 2-3 weeks.

Regards  
Debbi  
Debbi White  
Property Asset Manager  
St Albans City District Council  
Tel 01727 819515  
[REDACTED] [REDACTED]

---

**From:** Pat Stell [ ]  
**Sent:** 16 November 2015 13:55  
**To:** Debbi White; Lyn Henny  
**Subject:** RE: Red Cow Harpenden - ACV Nomination  
Dear Debbi

Thanks for the email. When can we expect a decision from SADC re the ACV nomination?

Kind regards

Patrick Stell

Patrick Stell MSc MRICS  
Chartered Building Surveyor/Solicitor  
Non-practising Law Society Member  
Director, Redplan Asset Management  
Unit 5, 40 Coldharbour Lane, Harpenden, AL5 4UN

E:

T: 01582 346243

M: 07973 417149

W:

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**From:** Debbi White [ <mailto:Deborah.White@stalbens.gov> ]

**Sent:** 13 November 2015 19:34

**To:** Pat Stell; Lyn Henny

**Subject:** Re: Red Cow Harpenden - ACV Nomination

Pat

Thanks for your email. Lyn and I visited at lunchtime today and Michelle (I assume) was absolutely fine about it and very helpful.

Thanks for your help.

Regards

Debbi



---

**From:** Pat Stell

**Sent:** Friday, 13 November 2015 15:55

**To:** Lyn Henny; Debbi White

**Subject:** RE: Red Cow Harpenden - ACV Nomination

Hello both

been out of the office this week and am just catching up on emails. not had the chance to give notice to the tenant. I hope you had a successful visit. If not been yet please let me know and let Michelle and Hamish know.

Cheers

PS

Patrick Stell MSc MRICS  
Chartered Building Surveyor/Solicitor  
Non-practising Law Society Member  
Director, Redplan Asset Management  
Unit 5, 40 Coldharbour Lane, Harpenden, AL5 4UN

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W:

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**From:** Lyn Henny [ <mailto:Lyn.Henny@stalbens.gov> ]

**Sent:** 03 November 2015 15:37

**To:** Pat Stell

**Cc:** Debbi White

**Subject:** RE: Red Cow Harpenden - ACV Nomination

Dear Pat

Thanks for your reply.

It will just be me my colleague Debbi White who will be visiting. Ideally we would like to be able to take some photos so we will introduce ourselves to the tenant to get permission so it might be a good idea if you let him know about our visit and to assure him that it is nothing to do with planning or licensing.

Kind Regards

Lyn

**Lyn Henny**

Asset Management Surveyor

Community Services

**St Albans City District Council**

Direct Dial 01727 819517

████████████████████  
████████████████████  
Ext 2517

[www.stalbans.gov](http://www.stalbans.gov)

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**From:** Pat Stell [ ]  
**Sent:** 03 November 2015 15:13  
**To:** Lyn Henny  
**Cc:** Debbi White  
**Subject:** Re: Red Cow Harpenden - ACV Nomination

Dear Lyn  
Pat Stell MSc MRICS  
Chartered Building Surveyor  
Solicitor  
Chartered Building Surveyor  
Non-practising Law Society Member  
Director, Paratrend Ltd

████████████████████  
T: 01582 346243  
████████████████████

The pub should be open so presumably you'll just be able to pop in as a normal member of the public would.

The new tenant is in the settling in phase so if you do introduce yourself please can we ask you to be careful not to suggest/imply to the Tenant that your visit is anything untoward such as a planning application or Licence issue etc (which may be their initial thought when they realise you are with SADC).

If the chap from CAMRA who nominated our pub and who lives in Wheathampsted (and has only been to the pub once several years ago!!) has a right to be there we will need to instruct some legal representation. Presumably he won't have a right of audience with SADC at this inspection; but if my assumption is incorrect please advise ASAP.

Please keep us posted re the above and with your decision and whether you need any more evidence from the previous owners in relation to their very poor trading history up to the date of our purchase on 21.9.15.

Thanks again.

Best regards

Patrick Stell

Paratrend Ltd

Owners Red Cow Pub

Patrick Stell BA MSc MRICS

Chartered Building Surveyor

Solicitor  
████████████████████  
████████████████████

T: 01582 346243

Redplan Asset Management

On 3 Nov 2015, at 14:50, Lyn Henny [Lyn.Henny@stalbans.gov](mailto:Lyn.Henny@stalbans.gov) > wrote:

Dear Mr Stell

We spoke a few weeks ago when I enquired about arranging a time when I could inspect the above property with regard to the nomination.

At the time the pub was in the process of being refurbished and therefore it convenient.

I was enquiring whether the works have been completed and if so would it be convenient to visit on 13<sup>th</sup> November between 12 noon 1pm?

Kind Regards

Lyn

**Lyn Henny**

Asset Management Surveyor

Community Services

**St Albans City District Council**

Direct Dial 01727 819517

[REDACTED]

Ext 2517

[www.stalbans.gov](http://www.stalbans.gov)

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## Judith Adamson

---

**From:** PHILIP DEFRIEZ [REDACTED]  
**Sent:** 20 August 2015 17:30  
**To:** Judith Adamson  
**Cc:** John Bishop; Paul Woodhouse; Melda Haward; Les Middlewood; Brian Page; Tom Blakemore; Ian Boyd; John Kemp; John Tubridy; John Lightfoot; Matthew Wall; Steve Bury; Rob Strachan  
**Subject:** ACV application - Red Cow Public House, Harpenden  
**Categories:** Needs action

Dear Judith

I wish to confirm that the application for the Asset of Community Value on the Red Cow Public House in Harpenden has been made by John Kemp on behalf of the South Hertfordshire branch of the Campaign for Real Ale

Please let me know if I can be of any further assistance

Thank you

Phil Defriez  
Chair  
CAMRA South Hertfordshie branch



## Official copy of register of title

Title number HD296565

Edition date 20.05.2016

- This official copy shows the entries on the register of title on 01 SEP 2016 at 16:27:28.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 01 Sep 2016.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by Land Registry, Leicester Office.

### A: Property Register

This register describes the land and estate comprised in the title.

HERTFORDSHIRE : ST ALBANS

- 1 (11.05.1992) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 171 Westfield Road, Harpenden (AL5 4ND).
- 2 (20.05.2016) A Boundary Agreement dated 19 May 2016 made between (1)Paratrend Limited and (2)Petal Homes LLP relates to a boundary agreement affecting the boundary between points A-G-K-L-V on the title plan.

The title plan has been replaced accordingly.

*NOTE: Copy filed*

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (20.10.2015) PROPRIETOR: PARATREND LIMITED (Co. Regn. No. 08227515) care of Patrick Stell, Unit 5, 40 Coldharbour Lane, Harpenden AL5 4UN and of 171 Westfield Road, Harpenden AL5 4ND.
- 2 (20.10.2015) The price stated to have been paid on 21 September 2015 was £450,000 plus VAT.

#### End of register

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from Land Registry.

This official copy is issued on 01 September 2016 shows the state of this title plan on 01 September 2016 at 16:27:28. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

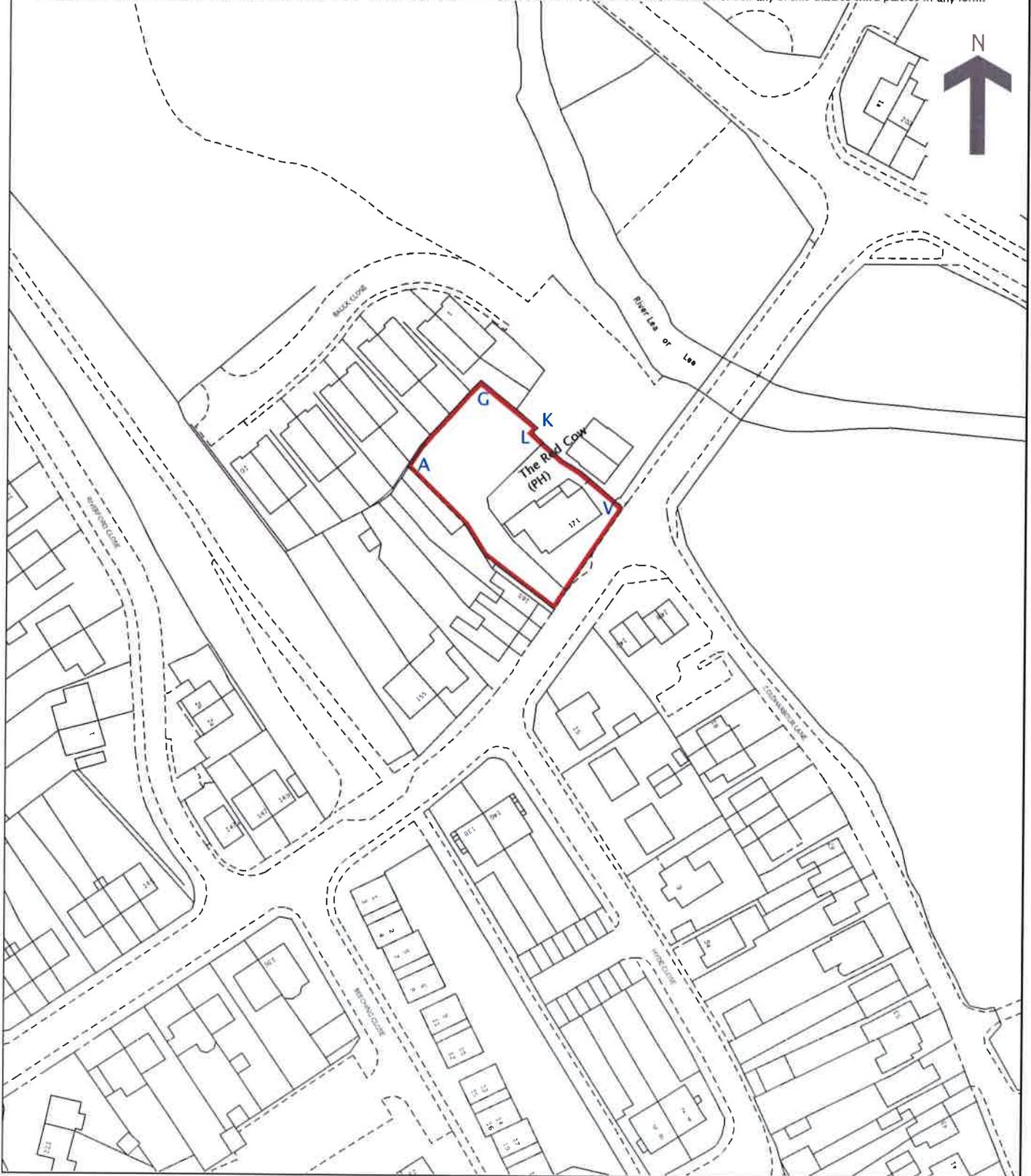
This title is dealt with by the Land Registry, Leicester Office .

Land Registry  
Official copy of  
title plan

Title number **HD296565**  
Ordnance Survey map reference **TL1315NE**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Hertfordshire : St Albans**



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## Barbara Martindale

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**From:** Pat Stell <[REDACTED]>  
**Sent:** 10 August 2016 18:55  
**To:** Judith Adamson  
**Cc:** [REDACTED] Asset of Community Value (ACV); 'Rob Strachan'; 'Darren Goes'  
**Subject:** RE: The Red Cow Review - Additional Questions for Mr Stell, Paratrend Ltd  
**Attachments:** 113 Paratrend to SADC ACV. 10.8.16.ISSD.pdf

Dear Judith  
Please see attached.  
Best regards  
PS  
Paratrend Ltd

---

**From:** Judith Adamson [mailto:Judith.Adamson@stalbans.gov.uk]  
**Sent:** 05 August 2016 17:12  
**To:** Pat Stell  
**Cc:** Stephen Carman; Asset of Community Value (ACV)  
**Subject:** RE: The Red Cow Review - Additional Questions for Mr Stell, Paratrend Ltd

Dear Mr Stell

Thank you for your very prompt email.

- A. You make a good point re the email addresses of CAMRA – I will forward your response to them.
- B. Mr Lovelady had this plan, i.e. the shaded area, created solely and exclusively for the purposes of asking this question for the review (this stage is a review; an appeal is available under the Act but this current process is a review). The marked plan's sole purpose is to identify the land Mr Lovelady wanted to ask the question about.

With regard to your comments at C. and E, it is a matter for you how, and to what extent, you choose to answer Mr Lovelady's questions. Mr Lovelady is asking when the land was fenced off (as it was not fenced off when the nomination was received as reflected in the initial inspection photographs in the Agenda).

As I have previously stated this is an open process and your response will be shared with the nominator. Please do not provide information you do not wish to be seen by other parties.

With regard to D., Mr Lovelady has asked for your comments as the person requesting the review.

We look forward to receiving your response in due course. Many thanks.

Kind regards

**Judith**  
Ms Judith Adamson  
Regulatory Solicitor  
Legal Democratic & Regulatory Services  
[judith.adamson@stalbans.gov.uk](mailto:judith.adamson@stalbans.gov.uk)  
Ext 2559

---

**From:** Pat Stell <[REDACTED]>  
**Sent:** 05 August 2016 16:35  
**To:** Judith Adamson  
**Cc:** Stephen Carman; Asset of Community Value (ACV)  
**Subject:** Re: The Red Cow Review - Additional Questions for Mr Stell, Paratrend Ltd

Dear Judith,

Thanks for the email. I will respond next week when I am back in the UK and once you have responded to this RFI.

A. Who at CAMRA are you asking me to cc on my response.

B. The land marked blue on the plan you've sent through includes land that was in a separate HMLR title at the time of the ACV nomination, namely land that was part of the rear and side garden of #165 Westfield Rd until March 2016. It is not a plan that we have ever seen before. Please advise how this plan came into existence and why this plan has been included with the ACV appeal.

C. The land marked blue also excludes land that has been transferred to an adjoining the owner as part of a Boundary Agreement a couple of months ago with HMLR agreement and pursuant to legal advice. This was two strips of land on the NE and separately along the NW boundaries (initially noted and agreed by CAMRA when we met Rob Strachan on site but for some unknown reason- they withdrew their agreement to this position after a committee meeting). It is a matter of fact however that the site at the date of the ACV nomination had a boundary that was very different in several respects to the NE/NW boundary as it now stands and that the land marked for ACV status at the time of nomination by CAMRA and the time of the SADC inspection is now part of the back garden of three adjoining residential properties. How do you want this issue addressed on the annotated plan you request?

D. With regard to item C above, are the 3 adjoining owners whose land was subject to the ACV nomination by CAMRA per their plan due to be involved in this process? Do SADC want their input on the recently issued plan that we have been asked to annotate?

E. Your second question requests information relating to commercially sensitive matters. Who will see the response? FYI Access to the vacant land to the rear was never legally permitted and was finally fenced off following an accident when an unauthorised driver hit a free standing timber barrier laid across the opening. It was also put in place to prevent fly-tipping. I'll supply more exact dates next week. We would not want our response to be viewed by commercial competitors, neighbours or CAMRA who we consider to be hostile to our pub operation.

Many thanks,

Patrick

Patrick Stell BA MSc MRICS  
Chartered Building Surveyor  
Solicitor  
Law Society Member (Non-practising)

  
Redplan Asset Management

On 5 Aug 2016, at 05:03, Judith Adamson <[Judith.Adamson@stalbens.gov.uk](mailto:Judith.Adamson@stalbens.gov.uk)> wrote:

Dear Mr Stell

Mr Lovelady is considering this matter and he has asked me to raise with you two questions:

1. Please can you clarify when the land marked in blue on the attached plan was fenced off restricting access to the car park? We note that this land was accessible when the

inspections were carried out by officers prior to the original nomination (see the photographs and inspection sheet pages 141 to 155 in the Agenda).

2. What is the future intention regarding the use of the land?

Mr Lovelady has asked me to request a response by Friday 19<sup>th</sup> August. Other parties are copied into this question for their information. Please copy CAMRA onto your response.

I look forward to hearing from you in due course. Many thanks.

Kind regards

**Judith**

Ms Judith Adamson  
Regulatory Solicitor  
Legal Democratic & Regulatory Services  
St Albans City & District Council  
St Peter's Street, St Albans , AL1 3JE  
[judith.adamson@stalbans.gov.uk](mailto:judith.adamson@stalbans.gov.uk)  
Ext 2559  
Direct line: 01727 819559  
Fax number: 01727 819255

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<Land at 171 westfield road.pdf>

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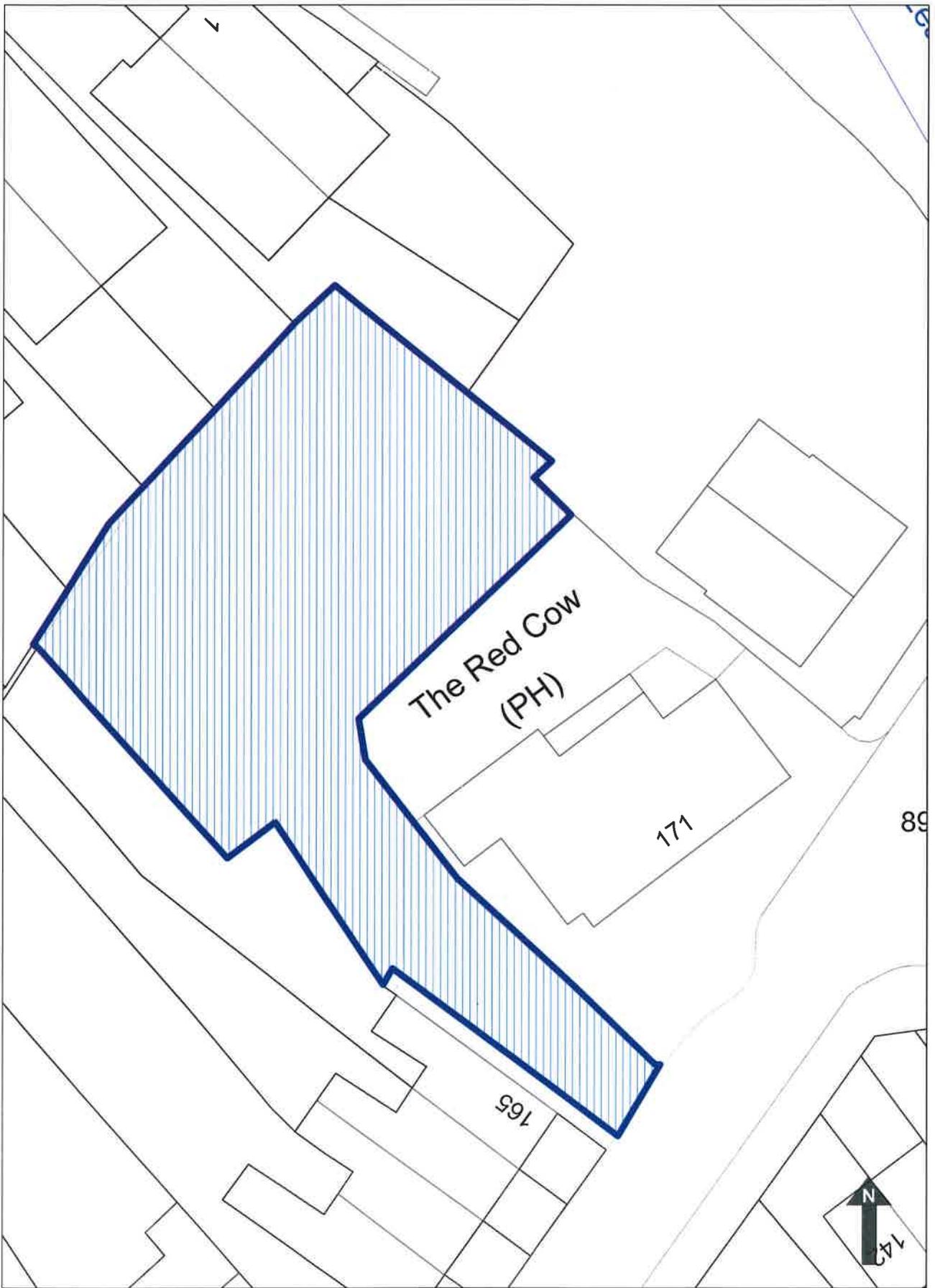
No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2016.0.7688 / Virus Database: 4627/12638 - Release Date: 07/18/16

Internal Virus Database is out of date.





**Land at The Red Cow PH, 171 WESTFIELD ROAD**



# Paratrend Limited

Registered Address: Unit 5, 40 Coldharbour Lane, Harpenden, Herts, AL5 4UN

T: 01582 346243

E: [pstell@redplan.co.uk](mailto:pstell@redplan.co.uk)

Judith Adamson, Regulatory Solicitor  
Legal Democratic & Regulatory Services  
St Albans City and District Council,  
Civic Centre, St Peters Street,  
St Albans, Hertfordshire AL1 3JE

By email only: [judith.adamson@stalbens.gov.uk](mailto:judith.adamson@stalbens.gov.uk)

10 August 2016

Dear Judith,

**Re: Red Cow Public House, Westfield Rd, Harpenden, AL5 4ND ("the Property")**

We write further to the emails dated:

1. 5<sup>th</sup> August 2016- SADC to Paratrend Ltd
2. 5<sup>th</sup> August 2016- Paratrend Ltd to SADC
3. 5<sup>th</sup> August 2016- SADC to Paratrend Ltd

Our responses to the SADC requests are as follows:

PART A- SADC request for clarification #1:

"Please can you clarify when the land marked in blue on the attached plan was fenced off restricting access to the car park? We note that this land was accessible when the inspections were carried out by officers prior to the original nomination (see the photographs and inspection sheet pages 141 to 155 in the Agenda)."

For the record, our initial response (email #2 listed above) raised the following points:

*"..... B. The land marked blue on the plan you've sent through includes land that was in a separate HMLR title at the time of the ACV nomination, namely land that was part of the rear and side garden of #165 Westfield Rd until March 2016. It is not a plan that we have ever seen before. Please advise how this plan came into existence and why this plan has been included with the ACV appeal.*

*C. The land marked blue also excludes land that has been transferred to an adjoining the owner as part of a Boundary Agreement a couple of months ago with HMLR agreement and pursuant to legal advice. This was two strips of land on the NE and separately along the NW boundaries (initially noted and agreed by CAMRA when we met Rob Strachan on site but for some unknown reason- they withdrew their agreement to this position after a committee meeting). It is a matter of fact however that the site at the date of the ACV nomination had a boundary that was very different in several respects to the NE/NW boundary as it now stands and that the land marked for ACV status at the time of nomination by CAMRA and the time of the SADC inspection is now part of the back garden of three adjoining residential properties. How do you want this issue addressed on the annotated plan you request?*

*D. With regard to item C above, are the 3no adjoining owners whose land was subject to the ACV nomination by CAMRA per their plan due to be involved in this process? Do SADC want their input on the recently issued plan that we have been asked to annotate?"*

Your subsequent response (email #3 listed above) provided further clarification as follows:

"Mr Lovelady had this plan, i.e. the shaded area, created solely and exclusively for the purposes of asking this question for the review (this stage is a review; an appeal is available under the Act but this current process is a review). The marked plan's sole purpose is to identify the land Mr Lovelady wanted to ask the question about..... Mr Lovelady is asking when the land was fenced off (as it was not fenced off when the nomination was received as reflected in the initial inspection photographs in the Agenda)."

Having reviewed the position in light of the various emails above we advise further as follows:

- i. For ease of reference we have marked up a version of Mr Loveday's plan at Fig 1 below.

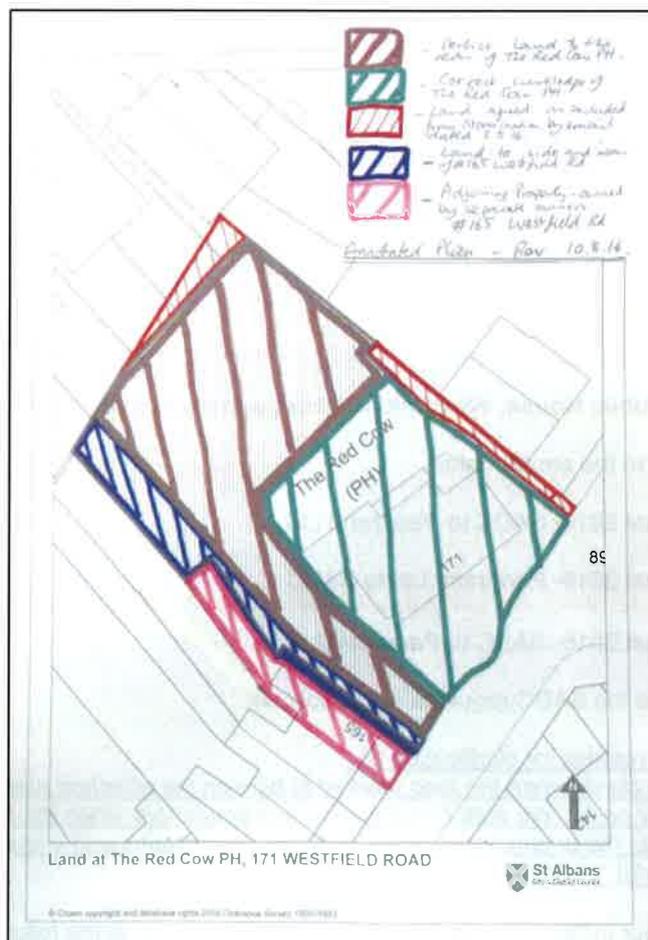


Fig 1. Annotated SADC plan showing the historical land use, occupiers and boundaries

- ii. The plan issued by Mr Loveday (with the land to the rear shaded blue) is potentially misleading for present purposes due to the following factors:
  - a. The latest SADC plan excludes the land shaded red on Fig 1 above; being land that was part of the CAMRA initial nomination, despite the fact it was occupied by a trespasser along with other areas of the brown shaded land for at least 15 months. i.e. The area of land (shaded red on Fig 1) was shown on the original CAMRA nomination and the original decision by SADC, despite at the time being occupied by a third party trespasser, along with further stretches of land within the area shaded brown on Fig. 1. We refer to our email to SADC dated 03/05/2016 15:35hrs which attached an email from CAMRA to Paratrend Ltd dated 03/05/2016 14:22hrs whereby it had been agreed by CAMRA on site and by email that the land shaded red had erroneously been included on their original nomination (and by reference also the original SADC decision) but was agreed by CAMRA as now not part of the ACV site because a fence had been erected houses had been built on it.

- b. We refer to CAMRA's plan at Fig. 2 below (produced by Rob Strachan of CAMRA) dated 3 May 2016; where the red line boundary was amended by CAMRA correlating with the correct land boundaries edged red on Fig.1.

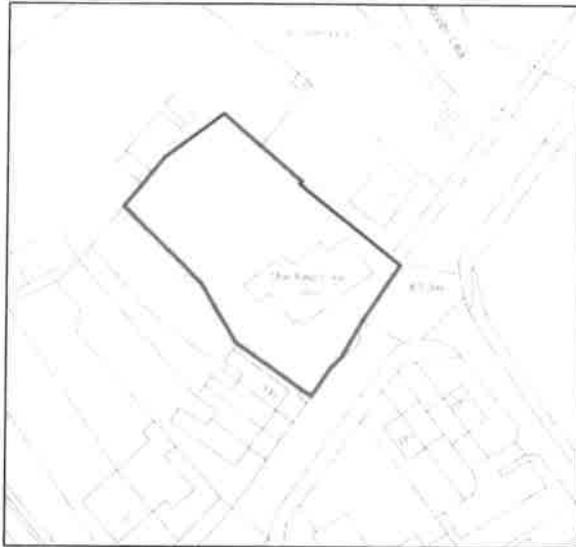


Fig. 2- Plan issued by CAMRA by email dated 03/05/2016 14:22hrs that according to CAMRA was "a border title plan revised to reflect that actual border as defined by a new fence to the rear cutting off the right corner and to reflect the land taken up by a new build on the Northern flank."

- c. The land shaded blue on the SADC plan includes areas of land in separate freehold titles that was never subject to the ACV. Incorporating the latest plan in this process risks significant prejudice to adjoining owners, e.g. The area of land shaded blue on Fig 1 above is in part the side garden/path and rear garden of #165 Westfield Rd. Please note that the area of land shaded blue on Fig. 1 is only partially fenced along the junction with the land shaded brown on Fig. 1 below.
- iii. To answer the question of "When the land was fenced off?" we answer as follows:
- a. The land shaded green on Fig 1 had a partial replacement fencing installed down the LHS of the building during December 2015. This fencing was required to prevent trespass by third parties onto the land shaded brown on Fig.1 below. During January 2016 a five bar gate was installed across the road frontage of the area of land shaded brown at the junction with Westfield Rd to prevent a recurrence of trespass and fly-tipping and following an accident when a trespasser crashed a car over a timber barrier placed across the entrance to land shaded brown on Fig 1.
- b. The land shaded red on Fig. 1 below was fenced off by the Adjoining Owner in June 2016 following a compensation payment from them to us a result of their trespass. Legal title and physical custody of the land shaded red was required for them to complete their house sales to purchasers of their houses as shown on Fig. 1. Even according to CAMRA (by reference to their email dated 03/05/2016 14:22hrs) the land shaded red was erroneously part of their initial ACV nomination. We reiterate that the land shaded red was previously illegally occupied by the developer from June 2105 (i.e. subject to trespass) up to June 2016 when the agreement with the adjoining owner transferred this land to the developer. We refer to the 'Heras' style temporary fencing shown in the photos produced by SADC as part of their report in November 2015.

- c. We would add that the presence of physical fencing (or absence thereof) is in no way determinative of legal ownership and/or legal rights to occupy and should not be relied on as such.
  - d. The various dates of the installation of the fencing of the land shaded green on Fig.1 does not define what was a separate site, with separate parts of the ACV nominated site under multiple occupations over the last 12 months.
  - e. We refer to the current HMLR title plan that shows the boundaries of the Red Cow Public House which in the absence of any better evidence from CAMRA or SADC in our view has to be basis of any ACV nominated site.
- iv. Having re-read the SADC site inspection notes dated 13 November 2015 (pages 140-155 of the SADC bundle of documents, as referenced in the email from SADC numbered 1 above (dated 5 August 2016)) we would like to clarify the following:
- a. The statement from Lynne Henny of SADC within her report advised that *"This is a public house which is open to the public during their opening hours. Outside the pub is a car park used by patrons. There is also seating area to the front of the pub and a garden and yard area to the rear. These areas have not yet been turned into public garden space but as it is winter and the pub has only just re--opened after being refurbished by the new tenant it is possible this will be more of a spring/ summer project"*.
  - b. This statement is based on an incorrect assumption that was not checked with us the owners, nor with the tenant. The rear area was not a car park and nor was it permitted to be used by Patrons. Signage present on site stated that the land was private and this land was not subject to any lease with the pub operator and is physically and legally separate as shown on the latest HMLR title plans.
  - c. The extent of the pub demise was and remains limited to the area of land shaded green on Fig. 1 above.
  - d. For SADC to conclude that a potential renovation project for land to the rear (i.e. land that does not form part of the demise of the ACV nominated pub) could in some form become *"more of a spring/ summer project"* is wildly speculative at best and in our opinion a totally inappropriate basis to make such a decision for our building.

PART B- SADC request for clarification #2: "What is the future intention regarding the use of the land?"

Subject to our stated reluctance to divulge commercially sensitive information, we can advise as follows:

- i. It is a matter of public record that we applied to build on the land to extend the current structure. This was rejected by SADC and would have been our preferred option. It is not currently possible.
- ii. We are also exploring the potential to sell the land and have received several expressions of interest.

- iii. In the absence of a decision regarding options i and ii above, it is likely that the land will remain derelict with partial vacant possession, fenced off to prevent trespass and fly-tipping.

In conclusion, our preference would be for this ACV nomination to be over-turned entirely. In the alternative we submit that only the area of land shown on the current HMLR plans as forming the "Red Cow Public House" can reasonably form the basis for an ACV nomination and as such the ACV nomination should be amended as appropriate.

Should you or Mr Loveday require further clarification please feel free to call me on 01582 346243 or 079673 417149 at any time.

Yours sincerely,



**Patrick Stell MRICS,  
Chartered Building Surveyor  
Solicitor, Non-practising Law Society Member  
Director for and on behalf of Paratrend Ltd**



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## Appeal Decisions

Site visit made on 14 September 2016

by **Paul Jackson B Arch (Hons) RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2016

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**Appeal A: APP/B1930/W/16/3151472**

**Appeal B: APP/B1930/Y/16/3151469**

**The Red Cow PH, Westfield Road, Hertfordshire AL5 4ND**

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission and under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeals are made by Paratrend Ltd against the decisions of St Albans City & District Council.
  - The applications Refs 5/2015/3548 & 5/2015/3590LB dated 14 December 2015, were refused by notices dated 1 March 2016.
  - The development proposed is construction of a rear extension, part demolition of rear extension, alterations and revised parking layout.
- 

### Decisions

1. The appeal is allowed and planning permission and listed building consent are granted for construction of a rear extension, part demolition of rear extension, alterations and revised parking layout at The Red Cow PH, Westfield Road, Hertfordshire AL5 4ND in accordance with the terms of the applications, Refs 5/2015/3548 & 5/2015/3590LB dated 14 December 2015, and the plans submitted with them, subject to the conditions in the attached schedule.

### Main Issues

2. The main issues are as follows:

#### *Appeal A*

- The effect of the proposed development on the character and appearance of the area;
- Whether the amount of car parking would be adequate; and
- The effect on the setting of the building, which is listed at Grade II.

#### *Appeal B*

- The effect of the proposed development on the architectural character and historic interest of the building, which is listed at Grade II.

### Reasons

#### *Policy background*

3. The development plan for the area includes saved policies of the St Albans District Local Plan Review of 1994 (LP). Within areas primarily residential in character, policy 9 says that the Council will not normally disturb lawfully existing non-residential uses, provided such activities are environmentally
-

acceptable in terms of visual impact, noise, smell, safety, health or traffic generation. Policies 34 and 39 have the effect of setting out parking standards (updated in 2002). Policy 69 seeks a high standard of design and advises that the materials used should normally relate to adjoining buildings. According to policy 72, amongst other things, extensions should relate to the domestic scale character and appearance of the street, with architectural treatment that is appropriate to the original building; extensions also should not seriously diminish the private space around the original building. With respect to listed buildings, policy 86 includes the requirement that alterations involving the removal, obliteration or encasing of internal or external features of architectural or historic interest, will not be permitted in the absence of exceptional circumstances.

4. The National Planning Policy Framework (NPPF) of 2012 advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). The NPPF has at its heart the achievement of sustainable development, which has economic, social and environmental dimensions, to be sought simultaneously. Paragraphs 18 and 19 emphasise the need to encourage economic growth, advising that planning should operate to encourage and not act as an impediment to sustainable growth; significant weight should be placed on the need to support economic growth through the planning system. Paragraph 28 promotes the retention and development of local services and community facilities including public houses.
5. Paragraph 70 says that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:
  - Plan positively for the provision and use of shared space, community facilities (such as public houses amongst others) and other local services to enhance the sustainability of communities and residential environments;
  - Guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
  - Ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and
  - Ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
6. The NPPF indicates at paragraph 132 that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Paragraph 134 says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. This is a different approach to that in LP policy 86 and in this case takes precedence.

7. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance.

*Character and appearance*

8. The Red Cow is a public house originally dating back to the 16<sup>th</sup> or 17<sup>th</sup> century. It was clad in brick in the 18<sup>th</sup> century and substantially altered and extended in the 20<sup>th</sup> century, principally with side and rear extensions. It benefits from a relatively large area of land at the rear, currently vacant and largely covered in gravel and other hard materials. A new extension to the rear is proposed which would provide additional covers, new kitchen accommodation and office and staff space, increasing trading floor space and enabling a more varied food and drink offering. The pub is listed as an asset of community value.
9. The pub lies on the edge of the built up area of Harpenden. The character of the area now generally derives from 20<sup>th</sup> century housing which has developed in varied forms, including a very recent scheme to the east side and rear of the pub. A terrace of 19<sup>th</sup> century houses lies immediately to the west. In the street scene, the pub provides a distinct link to the past, the front elevation being of obvious age. It defines the character of the immediate area and contributes to a noticeable sense of place at the bottom of a hill.
10. The proposed extension would be of substantial floor area but would be partly dug into the ground and as a result, would not project above the existing roof line. Recessed behind the existing side elevations, it would be difficult to see from any public viewpoint. It would be of fairly simple design, the clay tiles and brick elevations reflecting the materials used on the existing building. There would be plenty of natural light available through the windows along each side. A glazed link would separate the extension visually from the existing pub building, in an attempt to avoid a sense of the new extension 'crashing' into the existing.
11. It was evident at the site visit that the existing pub has limited seating and is very short of space for storage, food preparation and staff. The proposed additional space would be provided in a way which would significantly enhance these aspects without appearing dominant; indeed the existence of the rear extension would not be apparent to anyone unless they were entering the building or the car park. It would not be conspicuous from any neighbouring property. Despite its floor area and bulk, it would appear subservient to the existing building in purpose and design.
12. The car park at the rear would operate on a 'one way' basis around the perimeter of the extension and would be relatively spacious. Although there would be large areas of hardstanding, much of the existing rear area is neglected, already covered with concrete or gravel and has been for many years. Landscaping and planting in the immediate environs would provide the opportunity to improve the appearance of the area generally. This could be achieved by imposing a suitable planning condition. Overall there would be a distinct improvement in the quality of the environment at the rear of the pub.

The NPPF seeks a high quality of design but does not attempt to impose architectural styles or particular tastes or unsubstantiated requirements to conform to certain development forms or styles. The rear of the existing building, to which the extension would be attached, was constructed in a piecemeal manner in the 20<sup>th</sup> century and displays nothing of particular heritage interest; it does not relate well to or complement the original historic building. In practical terms, the extension would represent an improvement in the appearance of the whole site. Accordingly, it would not conflict with the aims of LP policies 9, 34, 69, or 72. Moreover, the development would facilitate modernisation in a way that is sustainable and of benefit to the community, whilst retaining and enhancing job opportunities. These are aims of the NPPF.

#### *Parking*

13. The revised LP parking standards of 2002 are agreed to be of limited usefulness, given the advice in the NPPF of 2012. The standards are in any case stated to be maxima, not to be exceeded, rather than a minimum provision. It is reasonable to assume that a fair proportion of customers for the enhanced facilities will come from the local neighbourhood and will walk to the premises, especially if they intend to consume alcohol. Moreover, spaces exist in residential streets within walking distance of the pub that are likely to be used if the car park is full. I noted at the site visit that the pub lies on several bus routes. Taking all the evidence into account, the proposed provision of 19 spaces, including a space for the disabled, is likely to be sufficient for the needs of staff and customers. In considering this matter, I have taken into account the Council's uncertainty over what would be an appropriate provision in discussions with the appellant; and the fact that the Highways Authority has no objection. No conflict is found with the aims of policies 34 or 39 or the NPPF in respect of parking provision.

#### *The listed building and its setting*

14. The significance of the Red Cow in heritage terms stems mainly from its architectural and historic interest. Whilst the whole building is listed, there is very little remaining heritage interest at the rear, if any, everything visible having been built in the 20<sup>th</sup> century in a nondescript style. Although the phases in which a listed building develops over time are always of interest, there is very little that is of architectural or historic merit at the rear. The new extension should be regarded as a further phase in the evolving economic story of this particular building.
15. Its special heritage interest can now only be properly appreciated from the street and internally, where some timbers, finishes and walls remain. The new extension and the creation of a new car park at the rear would improve the rear elevation and the setting of the whole. It would not cause any significant harm to any aspect of remaining heritage significance, including the building's setting. Having said that, the 20<sup>th</sup> century rear alterations were comprehensive, but the proposed interior alterations could potentially affect heritage significance in that a new opening is proposed leading to the rear, on one side of the bar. Without further intrusive investigative works, which would affect the current operation of the pub, the extent of remaining timber frame and early fabric that could be lost, if any, is difficult to establish.
16. The NPPF requires that in cases where 'less than substantial harm' occurs to a listed building, as in this proposal, the harm should be weighed against the

public benefits. This pub provides an important service on the edge of a residential area in a town, acknowledged by its designation as an asset of community value. Its future economic prosperity is in the interests of the local community and would comply with LP policies and national policies that seek sustainable growth. Providing that any remaining historic fabric that is exposed in the wall behind the bar and the stairs is carefully revealed and preserved or properly recorded during the works, the benefits of the scheme would significantly outweigh any harm. Any archaeological interest in the rear area excavation could also be established and recorded by imposing a suitable condition.

17. Historic England does not object. I conclude on this issue that with suitable conditions, the proposed works would comply with the heritage protection aims of the NPPF.

### **Other matters**

18. The appellant advises that declining 'wet' sales over the years and limited indoor seating capacity has affected the viability of the business. The Council does not dispute that the proposal would offer scope to enhance the viability of the public house, but queries the efforts made to develop the existing operation. In my view, the limited internal floor space available for customers, the restricted kitchen facilities and the declining sales year on year indicate that substantial new investment is likely to be necessary if this public facility is to continue to provide a service in this area of Harpenden. The suggested use of the site in marketing for residential purposes indicates the development pressures that public houses such as this can face.
19. I have taken account of the concerns of some local residents that the enhanced and enlarged Red Cow may impact on levels of noise and disturbance and cause parking problems. However there is no evidence that the increased level of use of the rear restaurant area would cause an unacceptable increase in noise, or that car parking in the local area would be an issue, given that the proposed car parking on site would be very significantly enhanced.

### **Conclusion**

20. The benefits of the proposed extension and alterations significantly outweigh the potential for harm to the architectural character or the fabric of the listed building. It has not been shown that the rear extension would dominate the existing building or that it or the car park would be unacceptable in terms of character and appearance or the setting of the listed building. The potential increase in trade in a popular local pub in a sustainable location has economic and social benefits. The development would comply with planning policy read as a whole.

### **Conditions**

21. Apart from the usual time limitations, conditions are imposed to require details of the materials to be used and details of the extension where it meets the existing building, in the interests of the character of the area and the architectural quality of the finished project. Materials used are to match those in the existing building, except where otherwise indicated or approved, in the interests of the architectural character of the listed building. Details of internal fixtures and fittings need to be approved for the same reason. Hard and soft

landscaping needs to be approved in the interests of the character of the area and the architectural quality of the finished project, including the necessary retaining walls at the rear and the means by which rear restaurant windows are to be protected from damage by vehicles. The car parking and circulation layout need to be retained for that purpose to avoid congestion on the public highway. A time limit on working hours is appropriate in view of the proximity of residential dwellings. Whilst no archaeological monitoring condition is requested by the local authority, the extent of excavation at the rear and the longstanding use of the site suggest that there may be items of interest revealed that should be recorded. The internal works may also reveal historic fabric which needs to be properly recorded.

22. Finally, the development should be carried out in accordance with the approved drawings, for the avoidance of doubt and in the interests of proper planning.

23. For all the above reasons, the appeal should be allowed.

*Paul Jackson*

INSPECTOR

Schedule of conditions

Appeal ref APP/B1930/W/16/3151472

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) No development shall take place until details of the junction between the new rear extension and the existing building at a scale of not less than 1:20 have been submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include (a) proposed finished levels and contours; (b) means of enclosure including retaining walls; (c) car parking layouts; (d) other vehicles and pedestrian access and circulation areas; (e) hard surfacing materials; (f) furniture, refuse or other storage units, signs and lighting); (g) existing trees to be retained; and (h) the means by which windows at the rear are protected from vehicles manoeuvring.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the

- commercial use of any part of the development or in accordance with a programme agreed with the Local Planning Authority.
- 6) The approved car parking and circulation layout shall be permanently retained for that purpose and no other; and made freely available for customers, staff and occupiers of the first floor flat of the Red Cow Public House.
  - 7) No demolition or construction works relating to this permission shall be carried out on any Sunday or Bank Holiday nor before 08.00 hours or after 18.00 hours on any days nor on any Saturday before 08.00 hours or after 13.00 hours.
  - 8) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds.
  - 9) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within 1 working day of their being revealed. Works shall be immediately halted in the area/part of the building affected until provision shall have been made for the retention and/or recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
  - 10) The development hereby permitted shall be carried out in accordance with the following approved plans: 12705/03D, 12705/04B, 12705/05B, 12705/06C, 12705/07C, 12705/09C.

Appeal ref APP/B1930/Y/16/3151469

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) Any historic or archaeological features not previously identified which are revealed when carrying out the works hereby permitted shall be retained in-situ and reported to the local planning authority in writing within 1 working day of their being revealed. Works shall be immediately halted in the area/part of the building affected until provision shall have been made for the retention and/or recording in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 3) All new external and internal works and finishes and works of making good shall match the existing original work adjacent in respect of materials used, detailed execution and finished appearance, except where indicated otherwise on the drawings hereby approved or as required by any approval of details by the Local Planning Authority subject to conditions attached to this consent.
- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted, including boundary walls, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 5) No works shall be carried out on the site until details of fixtures and fittings including floor finishes, tiling, insulation and services, have been submitted to and approved in writing by the Local Planning Authority, and the work shall then be carried out in accordance with those details.
- 6) The works hereby approved are only those specifically indicated on the approved drawings: 12705/03D, 12705/04B, 12705/05B, 12705/06C, 12705/07C, 12705/09C.



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

**Appeal Reference: CR/2015/0026**

**Heard at Field House  
On 18 May 2016**

**Before**

**JUDGE PETER LANE**

**Between**

**HAMNA WAKAF LIMITED**

**Appellant**

**and**

**LONDON BOROUGH OF LAMBETH**

**First Respondent**

**CAMRA SOUTH WEST LONDON**

**Second Respondent**

**Representation:**

For the appellant:	Mr David Elvin QC, and Mr Jonathan Wills, Junior Counsel, instructed by Messrs Freeths Solicitors, for the appellant
For the first respondent:	Mr George Laurence QC and Mr Simon Adamyk, instructed by the Solicitor, London Borough of Lambeth
For the second respondent:	Mr Geoff Strawbridge, CAMRA Regional Director and South West London Pubs Officer

## DECISION AND REASONS

### A. LEGISLATION

1. For present purposes, the relevant provisions are:-

#### ***Localism Act 2011***

##### ***87 List of assets of community value***

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a 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)).

##### ***88 Land of community value***

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a 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.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (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 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.

(3) The appropriate authority may by regulations—

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular)—

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—

(i) and of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section—

“legislation” means—

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

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

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

“statutory provision” means a provision of—

- (a) legislation, or
- (b) an instrument made under legislation.

**89 Procedure for including land in list**

(1) 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) For the purposes of this Chapter “community nomination”, in relation to a local authority, means 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.

(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local authority’s list of assets of community value in response to a nomination other than a community nomination.

(4) The appropriate authority may by regulations make provision as to—

- (a) the meaning in subsection (2)(b)(iii) of “voluntary or community body”;
- (b) the conditions that have to be met for a person to have a local connection for the purposes of subsection (2)(b)(iii);
- (c) the contents of community nominations;

(d) the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local authority's list of assets of community value.

(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local authority is considering whether land should be included in its list of assets of community value.

**90 Procedure on community nominations**

- (1) This section applies if a local authority receives a community nomination.
- (2) The authority must consider the nomination.
- (3) The authority must accept the nomination if the land nominated—
  - (a) is in the authority's area, and
  - (b) is of community value.
- (4) If the authority is required by subsection (3) to accept the nomination, the authority must cause the land to be included in the authority's list of assets of community value.
- (5) The nomination is unsuccessful if subsection (3) does not require the authority to accept the nomination.
- (6) If the nomination is unsuccessful, the authority must give, to the person who made the nomination, the authority's written reasons for its decision that the land could not be included in its list of assets of community value.

**92 Review of decision to include land in list**

- (1) The owner of land included in a local authority's list of assets of community value may ask the authority to review the authority's decision to include the land in the list.
- (2) If a request is made—
  - (a) under subsection (1), and
  - (b) in accordance with the time limits (if any) provided for in regulations under subsection (5),

the authority concerned must review its decision.

- (3) Where under subsection (2) an authority reviews a decision, the authority must notify the person who asked for the review—

- (a) of the decision on the review, and
- (b) of the reasons for the decision.

(4) If the decision on a review under subsection (2) is that the land concerned should not have been included in the authority's list of assets of community value—

- (a) the authority must remove the entry for the land from the list, and
- (b) where the land was included in the list in response to a community nomination —
  - (i) the nomination becomes unsuccessful, and
  - (ii) the authority must give a written copy of the reasons mentioned in subsection (3)(b) to the person who made the nomination.

(5) The appropriate authority may by regulations make provision as to the procedure to be followed in connection with a review under this section.

(6) Regulations under subsection (5) may (in particular) include—

- (a) provision as to time limits;
- (b) provision requiring the decision on the review to be made by a person of appropriate seniority who was not involved in the original decision;
- (c) provision as to the circumstances in which the person asking for the review is entitled to an oral hearing, and whether and by whom that person may be represented at the hearing;
- (d) provision for appeals against the decision on the review.

**108 Interpretation of Chapter: general**

(1) In this Chapter—

“appropriate authority” —

- (a) in relation to England means the Secretary of State, and
- (b) in relation to Wales means the Welsh Ministers;

“building” includes part of a building;

“community nomination” has the meaning given by section 89(2);

“land” includes—

- (a) part of a building,
- (b) part of any other structure, and
- (c) mines and minerals, whether or not held with the surface;

“land of community value” is to be read in accordance with section 88;

“local authority” is to be read in accordance with section 106;

“owner”, in relation to any land, is to read in accordance with section 107;

“unsuccessful”, in relation to a community nomination, has the meaning given by sections 90(5) and 92(4)(b)(i).

(2) For the meaning of “list of assets of community value” see section 87(2).

(3) For the meaning of “list of land nominated by unsuccessful community nominations” see section 93(2).

### ***Assets of Community Value (England) Regulations 2012***

#### ***List of assets of community value***

#### **2.**

A local authority must as soon as practicable after receiving information that enables it to do so make the following amendments to an entry on the list—

.....

- (c) remove the entry if—
  - (i) an appeal against listing is successful, or
  - (ii) the authority for any reason no longer considers the land to be land of community value.

#### **Definition of local connection**

#### **4.—**

(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 partly 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 partly applied—

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

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

(c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.

(2) For the purposes of these regulations and section 89(2)(b)(iii) of the Act—

(a) a parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area; and

(b) a parish council has a local connection with land that is in a local authority's area but is not in any parish council's area if—

(i) the council's area is within the local authority's area, or

(ii) any part of the boundary of the council's area is also part of the boundary of the local authority's area.

(3) In paragraph (1)(c), "local member" means a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts<sup>1</sup>.

### **Voluntary or community bodies**

5.—

(1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), "a voluntary or community body" means—

(a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990<sup>1</sup>;

(b) a parish council;

(c) an unincorporated body—

(i) whose members include at least 21 individuals, and

(ii) which does not distribute any surplus it makes to its members;

(d) a charity;

(e) a company limited by guarantee which does not distribute any surplus it makes to its members;

(f) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or

(g) a community interest company<sup>3</sup>.

(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.

(3) In this regulation “co-operative or community benefit society” means a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union.

### **Contents of community nominations**

#### **6.**

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.

### **Procedure when considering whether to list land**

#### **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.

**8.**

A local authority which is considering whether land nominated by a community nomination should be included in the list must take all practicable steps to give the information that it is considering listing the land to—

- (a) a parish council if any of the land is in the council's area;
- (b) the owner of the land;
- (c) where the owner is not the freeholder—
  - (i) the holder of the freehold estate in the land; and
  - (ii) the holder of any leasehold estate in the land other than the owner; and
- (d) any lawful occupant of the land.

**Appeal against listing review decision**

**11.—**

- (1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority's decision on a listing review in respect of the land.
- (2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

**B. THE FACTS**

2. The Grosvenor Public House, 17 Sidney Road, Stockwell, London, ran as a pub from the mid-nineteenth century until in or around August 2014. On 5 August 2015, Lambeth Borough Council ("the Council") received a nomination form in respect of the Grosvenor, seeking the listing of the property as an asset of community value under the 2011 Act.

3. The name of the organisation making the nomination was given as "Campaign for Real Ale Ltd – South West London Branch". On the nomination form, provided by the Council, the applicant was told to tick one or more of the appropriate boxes placed respectively against the expressions neighbourhood

forum; an unincorporated body with at least 21 members; a charity; a company limited by guarantee; an industrial and provident society; and a community interest company. A cross was placed in the box against "a company limited by guarantee".

4. Within the box headed "please state what your organisation does and what its main activities are (a) within the London Borough of Lambeth and (b) outside the Borough if applicable" the following was written:-

"CAMRA, the Campaign for Real Ale is an independent, voluntary organisation campaigning for real ale, community and consumer rights.

a- The South West London CAMRA Branch has 358 members in the London Borough of Lambeth.

- The Branch contributes to the London Drinker magazine, which covers pubs in the area as well as London wide information.

- We operate a network of volunteer District Representatives by postcode, maintain the WhatPub database of all our pubs and promote on our website the various festivals and other community events they may hold from time to time.

- We provide the details and descriptions for those pubs voted for inclusion in CAMRA's annual Good Beer Guide.

b- CAMRA supports well run pubs as the centres of community life – whether in rural or urban areas – and believe their continued existence plays a critical social role in UK culture. CAMRA also supports the pub as the one place in which to consume real ale (also known as cask-conditioned beer, or cask ale) and to try one of over 5,500 different styles now produced across the UK.

- The Branch holds an annual Pub of the Year competition within its area comprising Merton and Wandsworth Boroughs and the SW postcodes of Lambeth. The current holder is the Eagle Ale House in Battersea. Previous winners include the Priory Arms in south Lambeth/Stockwell and the Trinity Arms in Brixton.

- The Branch has held an annual beer festival for more than twenty years but sadly our venue, the grand hall at the Battersea Art Centre burnt down earlier this year".

5. In answer to the question "how many members does your organisation have?" the following answer was given:-

"CAMRA has 173,000. 1,522 SW London Branch members, of which 358 live in Lambeth. 578 CAMRA members living in Lambeth spread over 3 Branches (Croydon and Sutton 29 and SE London 199.)".

6. The form contained the following request:-

"If the organisation is an unincorporated body please attach the names and addresses of 21 members who are registered to vote in the London Borough of Lambeth".

No such names and addresses were included with the nomination form.

7. The name and address of the property was given as the Grosvenor Public House, 17 Sidney Road, London, SW9 0TP. A site plan showing the property and its boundaries was, apparently, supplied.

8. Section 4 of the nomination form was entitled "information to support the nomination: please state your reasons for thinking that the Council should conclude that the property is of Community Value and provide as much information as you can to support your application (to be continued on a separate sheet of paper if necessary)".

9. As completed, the box stated, in summary, that the Grosvenor was a local pub, where young and old came to relax and enjoy themselves. It was said to be "the heart of the local community". Each month an open session for musicians to play and learn folk music had been held. On most other nights the Grosvenor was said to have been "an important centre for social interests", including music of all kinds. A pool table was also provided and the Brixton Ping Pong Society was quoted as being sad to have to leave as a result of the closure of the Grosvenor. Reference was then made to the Lambeth local plan, in supporting the role of pubs in Lambeth. The response ended with a quotation from Councillor Gadsby, who paid tribute to the Grosvenor having "a long history of not just being a well run pub with great relations with its immediate residential neighbours, but also a great part of Brixton's local artistic community". As well as music, the Grosvenor had been used, according to Councillor Gadsby, by a variety of groups for community events.

### **C. LISTING AND REVIEW**

10. The Council's ACV panel concluded on 12 August 2015 that the Grosvenor should be listed as an asset of community value. The appellant sought a review of that decision on the basis that:-

- (a) the nomination was not a community nomination within the terms of section 89(1)(a) and (2)(b) of the 2011 Act, as it was not made by a voluntary or community body; and

(b) in any event, it was not realistic to think that the Grosvenor would be used for purposes falling within section 88(2)(b) at a time in the next five years.

11. The review was undertaken by Ms Sophie Linton, the Council's Head of Valuation and Strategic Property Services. She set out the essence of the first ground of challenge as follows:-

"The evidence provided by the Nominator does not suggest that CAMRA 'central' gave any particular sanction to the Grosvenor nomination. But was it fatal to the nomination that the Nominator ticked the wrong box on the nomination form, but was in all respects a community nomination, given the number of local residents who are members of the very Branch which made the nomination? In other words, could the regulation 5(1)(e) arguments be set aside if we find in fact that the SW London Branch qualifies under regulation 5(1)(c) and so the 'nexus' argument is negated?"

12. Ms Linton noted that George Laurence QC had provided an opinion to the Council, in which he advised that even if it was established on review that the evidence was insufficient to show that the nominator was a qualifying company and was thus ineligible to make a community nomination on that ground, the listing could still be upheld if, in the course of the review, further evidence was adduced which showed that the nominator was a qualifying unincorporated body. In any event, according to Mr Laurence, "the overwhelming probability was that the requirement (i.e. at least 21 members of those living in Lambeth were on the electoral role) was satisfied".

13. Having noted the appellant's submission that it could not be assumed that members of the CAMRA Branch would be happy to have their names put forward in order to fulfil the "electoral role test," as they may face legal consequences for being a party to the proceedings, Ms Linton noted that, for the purposes of an appeal, individual members of the nominating group would not themselves be party to the proceedings by reason of having their names put forward.

14. So far as ground (a) was concerned, Ms Linton concluded that CAMRA's SW Branch was a qualifying unincorporated body within regulation 5(1)(c). She therefore dismissed the challenge brought on that ground.

15. Turning to ground (b), Ms Linton observed that, subsequent to the listing of the Grosvenor, the appellant had entered into an agreement for a lease (25 September 2015) with the Co-Operative Food Group, in respect of the ground floor of the property, for a term of fifteen years. In this regard, Ms Linton noted that the effect of the Town and Country Planning (General Permitted Development) (England) Order 2015 was that, as from 15 April 2015, a building used for a purpose falling within class A4 (drinking establishments) which is

listed as an asset of community value under the 2011 Act does not enjoy the permitted development rights, which would otherwise be conferred by the Order, in respect of the change of use of the building to one falling within class A1 (shops) or class A2 (financial and professional services). Ms Linton accepted the advice of Mr Laurence, which was that in determining whether the Grosvenor met the requirements of section 88(2) of the 2011 Act, it was relevant to take account of the fact that, as a listed asset, conversion from pub to shop use would require an express grant of planning permission.

16. Ms Linton also took account of the fact that the appellant had applied to the local planning authority for conversion of the upper floors of the Grosvenor to residential use (that is to say, from class A4 to class C3). At the time of the review, that application had not been determined. It nevertheless showed, according to Ms Linton, that there were "still a number of possible outcomes, and one of those, assuming the application for residential use is accepted, is the possibility of making a pub/community use on the ground floor more viable because there could be a significant rent roll from the letting of the flats above". Alternatively, she considered that the owner might convert the upper floors to "some kind of hotel/guest house/Air B and B operation which is more in keeping with there being a pub on the ground floor, and thereby the whole property may be converted into a pub/hotel".

17. For those reasons, Ms Linton's review decided that the Grosvenor should remain listed.

#### ***D. CAMRA AND ITS BRANCHES***

18. The Campaign for Real Ale Limited is a private company limited by guarantee under the Companies Act 2006. Its articles of association designate the directors of the company as its "National Executive". Amongst the company's objects are protecting the interests of all those who wish to drink beer; campaigning for an improvement in the quality and variety of British beer; and promoting and fostering activities concerned with the consumption of good quality beer. In furtherance of its objects the company has power, amongst other things:-

"h. to establish and support Branches whose objects are the same as the objects of CAMRA and to supply or aid in the establishment and support of clubs or association whose objects are sympathetic to the objects of CAMRA".

19. The income and property of CAMRA whencesoever derived is to be applied "solely towards to the promotion of the objects of CAMRA as set forth in these Articles, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the members of CAMRA ...". Upon the winding up or dissolution of the company, any surplus assets "shall not be paid to or distributed among the members of

CAMRA but shall be given or transferred to some other institution or institutor having objects similar to the objects of CAMRA ...”

20. Article 12 provides that:-

“12. No member may make any public statement or announcement in the name of CAMRA without the consent of the National Executive”.

21. The Articles make provision for the powers and duties of the national executive. Article 56 enables the national executive to delegate any of its powers to committees of members, provided that any such committee conforms to any regulations that may be imposed upon it by the national executive.

22. CAMRA’s internal policy document 2014-2015 contains a model Branch Constitution. All Branches of CAMRA are required to adopt the most recent such model “which gives instructions on the way that all Branches shall operate”. Any alteration to the model Constitution proposed by a Branch must be approved by the National Executive or a duly authorised representative.

23. Paragraph 1.31 sets out what Branches of CAMRA are expected to do. Paragraph (j) requires a Branch to:-

“Liaise with local planning departments and licensing authorities to discover which pubs are threatened with closure or alteration and take any appropriate action and to seek agreement that the relevant CAMRA Branch is informed whenever a planning application is received in respect of licensed premises”.

24. Paragraph 2.2, under the heading “Finances”, says:-

“From the memorandum of articles of association of a campaign (sic) and from the Model Branch Constitution contained herein, it follows that CAMRA is not a loosely affiliated grouping or federation of individual Branches but rather one large organisation whose members choose to organise the campaign’s activities through a network of Branches”.

25. The model Branch Constitution provides that the objects of the Branch are to support the aims and objectives of the Campaign for Real Ale Limited within a specified geographical area. The Branch is required to observe the regulations for Branches laid down from time to time by the national executive. As for membership:-

“3.4 Membership: any member of CAMRA living within the geographical area of the Branch is allocated to that Branch. Any other member of CAMRA may apply to become a member subject to the approval of the Branch committee who may refuse membership without assigning any reason.

3.5 If any member of the Branch shall cease to be a member of CAMRA his membership of the Branch will automatically terminate”.

26. The model Constitution also makes provision for meetings of the Branch and for the creation of a Branch committee. The assets of the Branch “shall be under the control of the Branch committee and no payment shall be made out of the Branch monies except by the authority of the Branch committee”.

27. Paragraph 3.17 makes provision for winding up of the Branch. This may occur by reason of the action of the national committee or by a special general meeting of the Branch called for that purpose, followed by at least a two thirds majority in favour of winding up “upon dissolution the assets shall be used firstly to pay off all proper liabilities of the Branch and any surplus thereafter shall be paid to CAMRA”.

28. An internal memorandum from the “Chair of key campaign number two, Paul Ainsworth” to the “regional directors (England only)” of 18 June 2015 was written in order to provide “an update on our new campaign to increase the number of pubs registered as assets of community value (ACV) and the support that is available to Branches”.

29. The memorandum was written in the light of the Permitted General Development Order 2015, which was considered to give “CAMRA Branches in England a real opportunity to actively protect pubs in their area by nominating them to be registered as ACVs ..... . To encourage all Branches, including those with no prior knowledge of the ACV process, CAMRA will launch a new in-house support service to assist CAMRA Branches with nominating pubs as ACVs in the next week”. Amongst the things to be offered was an “online nomination service” to enable Branch officials to complete a short online form for each nomination, which would then be processed to produce a “pre-populated local Council nomination form”, which would be returned to local Branches for the Branch to approve and submit to the Council in question. However, “CAMRA’s support service will play a facilitating role in CAMRA Branches and members will still play a pivotal role in the process”.

30. A further CAMRA internal memorandum, dated 8 April 2016, described how “CAMRA Branches are working hard at the local level to engage with local Councils to list pubs of assets of community value”. The memorandum sought to explain the benefits of a Branch having a good relationship with its local Council, together with tips for contacting that Council. The memorandum said that:-

“In some instances, CAMRA Branch nominations are being rejected on the basis that Councils do not understand the structure of our organisation and the local connection the Branch has to the area. Contacting the Council in the first instance can therefore be the difference between a pub accepted or rejected onto the Asset Register. Building good relationships also means the

Council have a contact in the CAMRA Branch should any local issues arise and may consult you on other local issues regarding pub protection”.

31. The memorandum included a proposed draft letter to be sent by a Branch to the relevant Council. The following passages are of particular significance:-

“I am writing on behalf of the X Branch of CAMRA, the Campaign for Real Ale, with regards to our campaign to nominate pubs as ‘assets of community value’.

The CAMRA Branch represents X number of members in your local authority area, who are all passionate about keeping pubs in the local area alive ...

As outlined in the 2011 Localism Act, there are a number of relevant bodies who are eligible to submit nominations. These include:

- 1 Parish Councils. This may be for an asset in its own area, or a neighbouring parish Council.
- 2 Unincorporated groups. These are groups of people with a membership of at least 21 local people who appear on the electoral role within the local authority or neighbouring local authority area.
- 3 Neighbourhood forums
- 4 Community interest groups with a local connection
- 5 A charity
- 6 A company limited by guarantee which does not distribute any surplus it makes to its members.

CAMRA, the Campaign for Real Ale, is an independent consumer organisation campaigning for real ale, community pubs and consumer rights. CAMRA is a company limited by guarantee, registered in England with company number 1270286. CAMRA’s national surplus is not distributed to its members and the individual CAMRA Branch activity where the pub is nominated is wholly or partly applied to the local authority area. The local CAMRA Branch submitting this nomination does not distribute any surplus it makes to its members in line with Section 5 of the regulations. The CAMRA Branch has a local connection as demonstrated by the following activities which are run and funded by the Branch within the local authority district:

.....

Our nominations to list pubs as ACVs are being submitted by the CAMRA Branch in line with Judge N J Warren’s First-tier Tribunal General Regulatory Chamber decision in *St Gabriel Properties Limited -v- London Borough of Lewisham and South East London Branch of CAMRA ...* the decision outlined that CAMRA and its local Branches can be treated in a ‘hybrid’ way and relies

upon CAMRA's status as a company limited by guarantee which does not distribute any surplus it makes to its members as well as the local Branch's own activities that provide a local connection with the land/property nominated ...".

### **E. THE POSITION REGARDING PLANNING PERMISSION**

32. On 7 March 2016 the Council, as local planning authority, issued a draft decision notice which, when implemented, will grant planning permission to the appellant for the change of use of the upper floors of the Grosvenor from public house (A4) use to residential (C3) use, including the erection of single storey extensions at first floor level and the formation of balconies with privacy screens at first and second floor levels, so as to provide self-contained residential units. Also to be permitted are an erection of a single storey ground floor rear infill extension to the public house and the installation of a roof cover over the existing rear yard.

33. Amongst the conditions that would be imposed in respect of this permission is the following:-

"3. The premises on the ground floor and ancillary basement level shall be used for a Public House and for no other purpose (including any other purpose in class A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and Town and Country Planning (General Permitted Development Order 1995 (as amended)).

Reason: to ensure the retention of the public house in accordance with Policy ED8 of the Lambeth local plan (2015)."

34. In connection with the present appeal, on 4 May 2016, the appellant submitted "further representations on behalf of the owner", exhibiting a draft agreement made pursuant to section 106 of the Town and Country Planning Act 1990. These representations said that the section 106 agreement, prepared in conjunction with the draft planning decision, would be executed "imminently" by the appellant. Accordingly, the appellant contended that, even if the remainder of the Grosvenor were to be found to meet the "test in the Localism Act 2011", the part of the property that is to be converted to for self-contained flats would not do so, and so should be excluded from listing in any event.

35. The draft section 106 agreement makes provision for a number of matters, including a contribution by the appellant to the Council in respect of affordable housing. The recitals to the draft agreement record, amongst other things, that:-

"F. Having regard to the provisions of the Lambeth local plan (2015), the national planning policy framework and the planning considerations affecting this Site, the Council considers that the Development ought only to

be permitted subject to the terms hereof and determine to grant the permission by delegated authority exercised on 5 August 2015”.

36. Upon the execution of the section 106 agreement, the Council will grant planning permission in accordance with the terms of the draft decision.

## **F. THE APPEAL**

37. The appellant appealed against the Council’s decision on the listing review. The hearing of the appeal took place on 18 May 2016.

## **G. TRIBUNAL DECISIONS**

38. Two decisions of the Tribunal are of particular relevance to the issues in this appeal. We have encountered the first in Part D above. St Gabriel Properties Limited v London Borough of Lewisham and CAMRA – South East London Branch (CR/2014/0011) concerned a pub known as the “Windmill” in Sydenham. An issue raised by the appellant in that case was that CAMRA South East London did not fall within regulation 5(1)(c) because it was not an unincorporated body but, rather, a branch of a body corporate. Although CAMRA itself could fall within regulation 5(1)(e), the appellant submitted that “national CAMRA did not have a local connection within regulation 4. In any event it was not the national organisation which made the nomination but its South East London Branch” (paragraph 15).

39. Judge Warren made the following findings:-

“19. At one point during the hearing, it was suggested on behalf of Lewisham that a national body such as CAMRA might be taken to fulfil the definition of ‘local connection’ in regulation 4 unless it could be shown that its national activities did not impinge upon the relevant local authority and its neighbours. I am unable to accept that submission. It seems to me to be implicit in section 89(2) of the Act that a ‘community nomination’ cannot come from a national organisation relying solely on its national activities. Something more by way of local connection is required.

20 The case is different, in my judgement, subject to the facts of any one individual case where a national charity or national company limited by guarantee also has a network of branches. In these circumstances, to regard a local branch and a national organisation as legally separate does not accord with actualities or with the purpose of the statute. It seems to me to be entirely artificial to regard a branch’s link with a national organisation as strong enough to prohibit the branch from having an independent existence under reg 5(1)(c) and yet not strong enough to permit the branch to take advantage of the national organisation status under regulation 5(1)(e). A proper application of the regulations, in my judgment, treats organisations

such as this in a hybrid way. CAMRA South East London Branch is entitled to rely on CAMRA's status as a company limited by guarantee which does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e). It is then entitled to rely on its own activities in order to satisfy Regulations 4(1)(a) and (b) and I find those sub-paragraphs to be satisfied in this case.

21. I should record that, for Lewisham, Mr Hopkins also submitted that the South East London Branch satisfied regulation 5(1)(c) as an unincorporated body. I prefer to rest my decision on what I regard as the proper and realistic approach to national organisations with local Branches. However, if I am wrong in this approach then I would accept this submission. 'Unincorporated body' is a broad term which includes community groups of any descriptions. St Gabriel Properties correctly point out that the Branch Constitution, unlike CAMRA's national articles of association, does not prohibit distribution of any surplus to members. There is no requirement, in my judgement however, for an unincorporated body within Reg 5(1)(c) to even have a written constitution; let alone a further requirement that a particular clause should be included.

22. Taking into account the branch's link with CAMRA nationally, and having heard evidence of what the branch actually does with its money, I consider that, as a matter of fact, CAMRA South East London Branch would satisfy Regulation 5(1)(c)(ii)."

40. In Mendoza Limited v London Borough of Camden and Carpenters Arms Supporters (CR/2015/0015), the Tribunal found that there was no requirement in the legislation for a voluntary or community body falling within regulation 5(1)(c) to be an unincorporated association, involving contractual obligations as between its members, or for the membership of the unincorporated body to be capable of comprehensive identification, provided that it included at least 21 identified individuals.

## **G. THE COMPETING ARGUMENTS**

### **(1) The appellant**

41. The case for the appellant essentially remains the same as it was at the review, although it was substantially elaborated by Mr Elvin QC both in writing and at the hearing. Section 89(1)(a) provides that – except where permitted by regulations made by the Secretary of State, etc. – land may be listed as an asset of community value only in response to a community nomination. Section 89(2) defines a "community nomination" as one which complies with paragraphs (a) and (b). Where section 89(2)(b)(iii) applies, the nomination must be by a "person" (as defined in the Interpretation Act 1978) that is "a voluntary or community body with a local connection". In order to meet the definition of "local connection", the body must satisfy the requirements of regulation 4. In order to be "a voluntary or

community body”, the body must satisfy the relevant requirements of regulation 5. In addition, a community nomination must satisfy the requirements of regulation 6, as to the description of the nominated land, information regarding current occupants, owners and lessees, the reasons for thinking that the land is of community value and evidence that the nominator is eligible to make a community nomination.

42. According to the appellant, it was impermissible for a nomination that purported to be a community nomination made by a company limited by guarantee falling within regulation 5(1)(e) to be treated by the Council as a nomination falling within regulation 5(1)(c); that is to say, one made by an unincorporated body, which includes at least 21 individuals and which does not distribute any surplus to its members. The requirement in regulation 6(d) that the nomination should include “evidence that the nominator is eligible to make a community nomination” reinforced the fact that one could not, in effect, treat one form of purported community nomination as if it were another form.

43. It was, Mr Elvin said, also important to observe that section 89(2)(b)(iii) required the community nomination to be by “a person that is a voluntary or community body”. “Person” is defined in the Interpretation Act 1978 as including “any body of persons corporate or un-incorporate”. It was, accordingly, not enough to be an unincorporated body; one needed to be a person as well.

44. Mr Elvin submitted that the Regulations needed to be construed strictly, since the effect of listing under section 87 involved significant restraints upon property rights. He pointed to the changes that had occurred in the regime relating to general permitted development and to the fact that listing was a material consideration in determining planning applications.

45. According to the appellant, the nomination form, with the cross placed against the box relating to a “company limited by guarantee”, showed plainly that the nominator was being described by reference to regulation 5(1)(e). A reading of CAMRA’s articles of association and associated documents showed that CAMRA Branches in fact have no independent legal identity and that CAMRA is a “single organisation”. CAMRA’s internal memoranda demonstrated that CAMRA Limited leaves the nomination of assets of community value to its Branches. CAMRA Limited plays only a supporting role.

46. Both the appellant and the first respondent were, Mr Elvin said, agreed that there was no evidence to support a conclusion that, as a matter of company or agency law, CAMRA SW London Branch had been authorised by the Campaign for Real Ale Limited to make a community nomination in the company’s name in respect of the Grosvenor. On the contrary, the company expected the Branches to make nominations.

47. The second respondent's statement of case was, according to Mr Elvin, confused as to the basis upon which the purported nomination of the Grosvenor had been made. At paragraph 16.1.18 of the statement, it seemed to be suggested that the SW London Branch did not, in fact, make the nomination as an unincorporated body.

48. Mr Elvin parted company with Mr Laurence on whether the reviewer, Ms Linton, had been entitled to view the nomination as made under regulation 5(1)(c). The community nomination had to be viewed by reference to what was in the nomination form submitted to the Council. The basis of nomination could not be reformulated at the review stage. The Tribunal in the St Gabriel decision had been wrong to conflate the statuses of Campaign for Real Ale Limited and its Branch in order to bring the nomination within regulation 5(1)(e). Both the appellant and the first respondent were agreed on that matter. They were not, however, agreed on the Tribunal's alternative finding that the Branch met the requirements of regulation 5(1)(c).

49. Mr Elvin noted that Mr Laurence, in his written materials, had relied upon the case of R (Warden and Fellows of Winchester College and Another) v Hampshire County Council [2008] EWCA Civ 431. In that case, the court held that an application to modify a definitive map by upgrading certain rights of way to byways open to all traffic had to be made in accordance with all of the requirements of paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981, in order for the rights of way to be safe from extinguishment by the operation of section 67(3) of the Natural Environment and Rural Communities Act 2006, because section 67, on its true construction, made compliance with those requirements mandatory for the purposes of section 67(3) (my emphasis).

50. The court drew a distinction between what section 67 of the 2006 Act required, on the one hand, and the wider question of whether it was open to the council in that case:

"to treat an application which was not made in accordance with that paragraph as if it had been so made because the failure could be characterised as a breach of a procedural requirement rather than a breach which was so fundamental that (to use the judge's language) the application failed to 'constitute an application' at all. I readily accept that the wider question is relevant and important in the context of applications made under section 53(5) generally and whether an authority has jurisdiction to make a determination pursuant to paragraph 3 of Schedule 14" (paragraph 36).

51. At paragraph 67, the court (per Dyson LJ) found that:-

"The judge was right on this issue. As Mr Mould submits, the correct approach is to apply ordinary public law principles. Insofar as there is shown to have been a failure to comply with the procedural requirements of paragraph 2, it is necessary to ask whether and, if so, to what extent any

substantial prejudice has been suffered as a result. On the facts of this case, the Council was entitled to waive the failure to comply with the procedural requirement.

68. In my view, the difference between the failure to comply with paragraph 1 (the first issue) and the failure to comply with paragraph 2 (the second issue) is fundamental. As I have explained, in the first case the effect of section 67(6) was that section 67(3)(a) was not engaged and section 67(1) applied. It was irrelevant whether the failure was a breach of a procedural requirement which could be waived. On the other hand, in the second case section 67(6) is not in play. The only question here is whether the determination was a determination under paragraph 3. On the face of it the Council unquestionably decided to make a determination ..."

52. According to Mr Elvin, the Winchester College case supported the appellant. The requirements in the legislation with which the Tribunal was concerned were, in effect, analogous with those in section 67 of the 2006 Act.

53. On the issue of future realistic use, Mr Elvin submitted that the antithesis of "realistic" was not, as the Tribunal had elsewhere suggested, "fanciful". According to the Shorter Oxford English Dictionary, "realistic" meant "tending to regard things as they really are; characterised by a practical view of life" whereas "fanciful" meant "suggested by fancy; imaginary, unreal". Thus, according to Mr Elvin, something could be not "realistic" even though it was more than "fanciful".

54. Marketing reports submitted by the appellant had demonstrated the lack of interest in continued use of the Grosvenor as a pub. So far as the condition attached to the draft planning decision was concerned, Mr Elvin said that the Co-Operative had taken an agreement for a lease. Once the section 106 agreement was signed, it was realistic to think that the owner would carry out the residential development of the upper floors and let the ground floor to the Co-Op. Such a store would not, in the circumstances, amount to a social asset, contrary to Mr Laurence's submission, since a store in the Grosvenor would not constitute the sort of social lifeline that, say, a shop in a rural location might do.

55. Mr Elvin urged the Tribunal to address the section 88(2) test without regard to the fact that the current listed status of the Grosvenor meant that conversion from pub to shop use would require express planning consent.

## **(2) The Council**

56. For the Council, Mr Laurence submitted that what separated his client's position from that of the appellant was regulation 6. The appellant's stance was that unless each of the requirements in paragraphs (a) to (d) was met, the nomination could not amount to a "community nomination" for the purposes of

the 2011 Act. Any such “threshold failure” could not, accordingly, subsequently be rectified.

57. The Council’s approach was more nuanced. If on its face the nomination “fairly” satisfied regulation 6, then evidence could subsequently be admitted to make good what might have been an initial omission in the nomination.

58. Mr Laurence proceeded to “test” the appellant’s stance by reference to the paragraphs of regulation 6. Accordingly, if the land as set out in the verbal description was inaccurate to some extent or if the delineated boundaries on the plan were slightly incorrect, then, on the appellant’s stance, this would doom the nomination, without possibility of repair. The same point could be made of regulation 6(b). As for regulation 6(c), Mr Laurence asked rhetorically what the position might be, according to the appellant, if the nominator subsequently thought of other reasons for the nomination. In short, if the nomination was in any way deficient, then, according to the appellant, any attempt to rectify this had to be ruled out.

59. Mr Laurence said that if it were to be accepted that rectifying material could be adduced before the Council made its decision whether to list, then it was difficult to see why such material could not be adduced in connection with the review stage of the process, such as happened in the present case. The first respondent’s approach to the legislative requirements, in short, enabled the latter to operate in a sensible manner.

60. It could not be right, Mr Laurence argued, that placing a tick or a cross in the wrong box in the nomination form meant that the Council could not treat the nomination as made on what was evidently the correct basis; in this case, regulation 5(1)(c). So far as concerned the requirement to have at least 21 local members, defined in regulation 4(3) as a member registered as a local government elector in the relevant register, Mr Laurence said that there was nothing legally wrong in such a list being supplied after the nomination. In any event, it must be possible in law to satisfy regulation 4(3) otherwise than by direct reference to the register; for example, if that register had been physically destroyed.

61. So far as the Winchester College case was concerned, Mr Laurence said that Dyson LJ had drawn a clear distinction between, on the one hand, the need for the purposes of section 67(6) of the 2006 Act to make the application exactly in accordance with the requirements of the 1981 Act and, on the other hand, the fact that in all other circumstances it was permissible for the council to waive requirements and treat the application as compliant with the legislation. In the case of the 2011 Act, Mr Laurence submitted that Parliament had, in effect, made provision for such waiver, by including the legislative requirement for there to be a review, when fresh evidence could be adduced.

62. Mr Adamyk addressed the Tribunal on the position of CAMRA under company and agency law. In order for a CAMRA Branch to bind the company, the Branch needed to have express, implied or apparent authority to act on behalf of the company. The CAMRA material before the Tribunal demonstrated that no such authority existed in the present case. The St Gabriel case was wrongly decided, in that the Tribunal had impermissibly conflated the different “heads” set out in regulation 5. The Regulations could be taken to have been made against the background of established company and agency law.

### **(3) CAMRA**

63. For the second respondent, Mr Strawbridge said that in his view there was no “CAMRA Central” and that CAMRA’s Branches did not do anything other than on behalf of CAMRA. CAMRA had followed the approach taken in the St Gabriel case but, in the light of recent experience, it had now been decided that a Branch nominating a pub as an asset of community value would include in the nomination a “statement of support” letter from the Campaign for Real Ale Limited, making it plain that the Branch “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”.

64. So far as section 88(2) was concerned, Mr Strawbridge submitted that the draft planning decision notice, containing the condition requiring pub use of the ground floor and cellar of the Grosvenor, meant that it was plainly realistic to expect such a use to occur. Mr Strawbridge contended that the involvement of the Co-Op could not be regarded as a “given”.

### **(4) *The appellant in reply***

65. In reply, Mr Elvin said that the difference between the appellant and the first respondent was not about the nature of supplementary evidence in relation to regulation 6. Rather, it had to do with the question of whether one could change the identity of the nominator at the review stage, and the basis of the community nomination. Mr Elvin accepted that supplementary material could be used at a post-nomination stage; for example, evidence clarifying the boundaries of the property. What the present appeal was about, however, was an attempt to change the identity of the applicant. There was, according to Mr Elvin, a “world of difference” between, on the one hand, some uncertainty regarding the extent of the nominated property and, on the other hand, the nature of the bodies concerned for the purposes of regulation 5.

66. As for section 88(2), Mr Elvin said that the appellant’s stance on the draft planning decision in the section 106 agreement was as follows. The appellant intended to execute the agreement, with the result that the Council would grant planning permission in the terms of the draft decision. The appellant could then be expected to appeal against the condition requiring use of the ground floor and

basement as a pub. In that regard, the appellant would rely upon the planning practice guidance issued by the Secretary of State, which provided that:-

“Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.”

67. The appellant would contend that, once the Grosvenor had ceased to be listed as an asset of community value (pursuant to the correct outcome of this appeal), the condition as to pub use would fall foul of the guidance, since the condition would have the effect of precluding the appellant from changing the ground floor and basement from pub use to that of a shop.

## **H. DISCUSSION**

### ***(1) The nature of the legislative requirements***

68. As can be seen from section 89 of the 2011 Act, one of the two gateways leading to the listing of an asset of community value is in response to a “community nomination”, which is defined by subsection (2) so as to require (a) the nomination of land in the relevant local authority’s area; and (b) the nominator to be the relevant parish or community council or “a person that is a voluntary or community body with a local connection”.

69. Section 89(4) contains a power for the Secretary of State to make provision by regulations as to the meaning of “voluntary or community body; the conditions to be met for a person to have a local connection; and the contents of community nominations”.

70. I am entirely unpersuaded by the submission of the appellant that Parliament’s use of the word “person” in section 89(2)(b)(iii) imposes any material restriction upon what can constitute a “voluntary or community body” within the scope of the Regulations. A “person” is, obviously, an individual living human being or (as a result of section 6(c) of the Interpretation Act 1978) more than one such individual. By reason of Schedule 1 to the 1978 Act, a “person” also “includes a body of persons corporate or unincorporate”. I consider that Parliament’s inclusion of the words “a person that” in the phrase “a person that is a voluntary or community body” in section 89 of the 2011 Act is intended to make it plain that regulations made under section 89(4) can define a “voluntary or community body” by reference to individuals, bodies corporate and bodies unincorporate. The fact that a body corporate can, as a result, be a voluntary or community body accounts, in my view, for regulation 5(2), which shows the drafter considered it necessary to say expressly that a public or local authority

(which, of course, is a body corporate) may not be a voluntary or community body, unless it is a parish council.

71. In any event, the suggestion that the reference to a “person” in subsection (2)(b)(iii) imposes some sort of restriction on how one is supposed to read the reference to “an unincorporated body” in regulation 5(1)(c) lacks coherence. Nothing meaningful emerges from an expansion of the word “person” that makes subsection (2)(b)(iii) and regulation 5(1)(c) read “an unincorporated body that is ... ‘an unincorporated body ...’”. The word “body” is, for this purpose, to be given the same meaning in both the primary and secondary legislation.

72. The Concise Oxford Dictionary defines a “body” as “3 An organised group of people with a common function”. No satisfactory reason has been given by the appellant for why the “body” inherent in the definition of “person” should require any greater degree of organisation or common functionality than it bears in the expression “unincorporated body” in regulation 5(1)(c).

73. The next issue is to construe the Regulations made under section 89(4)(a) to (c). In the appellant’s view, they fall to be construed strictly. The adverse effects of listing upon an owner are such that, according to the appellant, no other approach is valid.

74. Although, in reply, Mr Elvin appeared to accept that there might be scope for some leeway regarding at least some of the requirements in regulation 6 (contents of community nominations), the appellant’s stance is that the requirements of the Regulations not only fall to be strictly construed but also need to be satisfied at the point at which the would-be nominator makes the purported nomination. It is not, on this view, possible for the local authority to which the nomination is made to seek thereafter to make good any failure; in particular, by seeking evidence pursuant to regulation 6(d) to show that the nominator is eligible to make a community nomination.

75. The Council’s position is that it is necessary to take what it describes as a “sensible view”, which entails finding that the legislature has, in effect, provided the local authority with what might be called a form of waiver.

76. Both the appellant and the Council placed reliance on the Winchester College case. It seems to me that this case makes it plain the answer to the question lies in statutory interpretation. In Winchester College, the effect of section 67 of the 2006 Act was that the applications had, for the purpose of that section, to be made in accordance with the requirements of paragraph 1 of Schedule 14 to the 1981 Act. That did not mean, however, that the authority concerned could not, for other purposes, waive a failure to comply with procedural requirements, depending upon whether and if so to what extent, substantial prejudice had been suffered as a result.

77. The fact that statutory construction lies at the heart of questions of this kind was established by the House of Lords in R v Soneji and Another [2006] 1 AC 340. The House described the former approach as follows:-

“14. A recurrent theme in the drafting of statutes is that Parliament casts its commands in imperative form without expressly spelling out the consequences of a failure to comply. It has been the source of a great deal of litigation. In the course of the last 130 years a distinction evolved between mandatory and directory requirements. The view was taken that where the requirement is mandatory, a failure to comply with it invalidates the Act in question. Where it is merely directory, a failure to comply does not invalidate what follows. There were refinements. For example, a distinction was made between two types of directory requirements, namely (1) requirements of a purely regulatory character where a failure to comply would never invalidate the Act, and (2) requirements where a failure to comply would not invalidate an Act provided that there was substantial compliance ...”

78. In London & Clydeside Estates Limited v Aberdeen District Council [1980] 1 WLR 182, a different approach emerged:-

“... it led to the adoption of a more flexible approach of focusing intensely on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament intended the outcome to be total invalidity. In framing the question in this way it is necessary to have regard to the fact that Parliament ex hypothesi did not consider the point of the ultimate outcome. Inevitably one must be considering objectively what intention should be imputed to Parliament.” (15).

Accordingly, at paragraph 23 the House (per Lord Steyn) held that:

“the emphasis ought to be on the consequences of non-compliance and posing the question whether parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction”.

79. How, then, should we approach the legislative regime in the present case? Whilst I acknowledge Mr Elvin’s point that listing of an asset can have adverse consequences for an owner, not only in respect of the imposition of a moratorium on sale but also, indirectly, as regards the planning regime, in enacting the 2011 Act, Parliament has clearly been at some pains to strike a careful balance between the position of owners, etc., on the one hand, and the interests of the local community, on the other.

80. By conferring a power of nomination on “a voluntary or community body with a local connection”, in addition to parish and community councils, Parliament in my view envisaged that the nomination process may fall to be undertaken by those without any expertise in compiling formal legal documentation. Furthermore, Parliament would have been aware that a

voluntary or community body may often be one formed at short notice in response to a previously unforeseeable threat to a community asset. In such circumstances, the body may well find itself having to make the nomination in haste.

81. In view of this, it would be contrary to Parliament's purpose to interpret the subordinate legislation made by the Secretary of State in pursuance of section 89(4) as requiring strict adherence to each of the obligations set out in regulation 6. The true construction of the overall statutory scheme is, I find, such that the local authority in question has discretion to waive a requirement in regulation 6, where the authority reasonably concludes that no substantial prejudice would be caused. Furthermore and in any event, the authority may, on the same basis, permit a nominator to make good a failure under regulation 6, following initial receipt of the nomination documentation.

82. My conclusion that the legislation must be construed in essentially the way for which the Council contends is strengthened by the fact that the legislative scheme contains detailed provision in Schedule 2 to the Regulations for the authority concerned to undertake a listing review, at the request of the owner of listed land. The owner can appeal an adverse decision resulting from the review to the First-tier Tribunal. It follows that, in my view, the owner has no legitimate basis for contending that the validity of a nomination is to be construed on a strict and "once and for all" basis as regards each and every requirement, as at the date when the purported nomination was made. The process is designed to produce a robust conclusion on the merits regarding matters of substance; in particular, whether section 88(1) or (2) is satisfied.

83. These findings do not, however, entirely dispose of the appellant's submissions on this issue. Mr Elvin contends that it is simply not possible for a nominator, after the nomination is made, to switch from one kind of voluntary or community body as defined by regulation 5, to another such body. In the present case, he says that the Council was faced with an application purportedly made by a body falling within regulation 5(1)(e) – namely, a company limited by guarantee – and that the Council subsequently and wrongly treated that nomination as being made by an unincorporated body, within the scope of regulation 5(1)(c).

84. It seems to me to be evident that a local authority cannot waive the requirements of regulation 5 (voluntary or community bodies) or of regulation 4 (local connection). To do so would thwart Parliament's will, in enacting section 89(2)(b). There has to be an identifiable local interest in having the asset nominated. Without such an interest, it is, at best, unlikely that there would be a community interest group to make a written request under section 95(3)(a), triggering the full moratorium period under that section. I also consider that it is not a proper interpretation of the Regulations that one of the bodies described in regulation 5 can take over and validate a purported nomination made by a body

which does not fall within regulation 5. For example, if body A nominates an asset on the basis that body A is a company limited by guarantee which does not distribute any surplus it makes to its members, but it transpires that body A is in fact a company limited by shares, then it is not possible for any other body B to be treated as making the nomination, notwithstanding that body B falls within Article 5. Body B would have to make its own nomination.

85. To this limited extent, I agree with the appellant that the nomination has a “once and for all” nature. But this does not avail the appellant. The finding of Ms Linton’s review was that CAMRA South West London Branch was, and had at all material times been, a body falling within regulation 5(1)(c). She concluded, in effect, that it did not matter if the Branch (or those acting on its behalf) had thought that, in some way, it fell to be treated as a company limited by guarantee.

86. I consider that Ms Linton’s approach was entirely permitted by the legislation. Subject to issues of procedural fairness, regulation 6(d), properly construed, enabled her to consider evidence, albeit not submitted at the time of the nomination, which showed that the nominator was at that time a body within regulation 5(1)(c). For the reasons I have given earlier, Parliament cannot in my view be regarded as contemplating that regulations made under section 89(4) could prohibit a local authority from (as here) ignoring a tick or cross, which turns out to have been placed in the wrong box on a form.

87. What I have just said is, of course, predicated on the basis that, as both Mr Elvin and Mr Adamyk submitted, CAMRA South West London Branch did not have authority to make the nomination on behalf of the Campaign for Real Ale Limited. I accept all that has been said (as recorded above) on this issue. 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.

88. That is, however, not to say that the character of a body such as the Campaign for Real Ale Limited cannot play any part in determining the characteristics of the Branch, for the purposes of the legislation with which we are concerned. For example, in deciding whether the requirement in regulation 5(1)(c)(ii) is met in the case of the Branch, the fact that the Campaign for Real Ale Limited meets this requirement may dispel any doubt that may exist as to whether the Branch does so.

89. I reject the appellant’s contention that CAMRA’s Branches cannot legally be distinguished from the Campaign for Real Ale Limited, for the purposes of regulation 5. It is clear from the materials to which I have referred, especially the model Branch Constitution and the internal memoranda, that the South West London Branch has an identity as an organised group of people in South West London, with the common functions described in the nomination form. That form also specified that 358 members of the Branch live in Lambeth.

90. In the light of my findings, I conclude that the Council was entitled, after the nomination was made, to seek additional evidence on the subject of the Branch's eligibility to make a community nomination. That evidence resulted in material being supplied, which put beyond any doubt that the Branch had at least 21 local members, registered as local government electors, as described in regulation 4(3). In any event, however, I accept Mr Laurence's submission that, in the light of the very large numbers of members specified in the nomination form, it was more likely than not that at least 21 individuals fell within regulation 4(3).

**(2) Section 88(2) of the 2011 Act**

91. It is, accordingly, necessary to deal with the second of the appellant's grounds, which contends that the requirements of section 88(2)(b) of the 2011 Act are not met in the case of the Grosvenor. There is no dispute that the Grosvenor satisfied section 88(2)(a), given the activities carried on there until it closed in 2014.

92. In determining whether it was realistic to think that there is a time in the next five years when there could be relevant use of the Grosvenor, Mr Elvin urged the Tribunal to eschew any use of the word "fanciful" as the antithesis of "realistic". Dealing with the same issue in Banner Homes Limited v St Albans City and District Council and Verulam Residents Association [2016] UKUT 0232 (AAC), the Upper Tribunal said:-

"38. In my opinion it is always wiser to use the statutory language. That is more likely to focus the mind and avoid the risk of error. However, in the present context I cannot envisage any empty space between what is 'not fanciful' and what is 'realistic' and the First-tier Tribunal was not in error of law on this point".

93. I do not intend to depart from the Upper Tribunal's advice. I do not, however, accept Mr Elvin's contention that paragraph 38 of the Upper Tribunal's decision was wrong and that something can be more than fanciful but less than realistic. The Shorter Oxford English Dictionary defines "fanciful" as: "2 Suggested by fancy; imaginary, unreal". The definition of "fanciful" given in answer to a Google search is: "1. over-imaginative and unrealistic".

94. I do not consider that the evidence before me shows the recent trading history of the Grosvenor, up to its closure, was so bad that it is unrealistic to expect any pub use to resume at the premises within the next five years. Indeed, the appellant did not advance its case in those terms. Reliance was, however, placed on the marketing materials. The following passage from the first marketing report is of significance:-

"2.4 Since we began marketing the property we have carried out over 12 onsite inspections with various potential occupiers and what has become

abundantly clear is that the majority of parties who have inspected the property have failed to make offers for two main reasons. Firstly, a large number of the parties felt that the area was very quiet from a trading point of view as there was limited footfall activity to support any form of leisure or retail operation.

The second major factor behind a lack of offers on the property is that it appears interested parties have no interest in taking the property as a whole. The idea of taking on 2 residential flats puts interested parties off the property. Leisure and retail tenants are exactly that – and it appears they do not like getting involved in the management hassle of taking on residential dwellings and effectively becoming a ‘landlord’. Interested parties were advised that the upper floors of the property could be used as ancillary storage (subject to planning) but again this was met with negativity as the property in its entirety is too large for the amount of trade the unit would benefit from.

Those parties who were comfortable with the location of the property did enquire as to whether the landlord would allow a letting of the ground floor and basement only as the upper floors were surplus to requirement”.

95. It is plain the appellant does not share the view that there are “limited footfall activities to support any form of leisure or retail operation”, since it has entered into an agreement for a lease for the Co-Op to use the ground floor as a retail store. Furthermore, the appellant has been at pains to emphasise its ability (but for the current listing) to change the use of the ground and basement floors from pub use to shop use.

96. I have already described the recent developments regarding the planning application made for the conversion of the upper floors of the Grosvenor, so as to create self-contained flats. Mr Elvin urged me to find that it was not realistic to expect any future pub use of the ground and basement floors of the Grosvenor. He made this submission, notwithstanding the fact that his client was, at the date of the hearing, said to be on the point of executing the section 106 agreement, which would trigger the grant of planning permission in the terms of the draft decision notice. The grant of permission would, accordingly, be subject to a condition that the ground and basement floors must be used as a pub.

97. Mr Elvin submitted that the current planning guidance (see paragraph 66 above) makes it plain that, except in exceptional circumstances, conditions should not be used to remove or restrict permitted development rights. As a result, the appellant would be likely to appeal the condition, once the planning consent crystallised, and win the appeal.

98. As has been stated in other appeals under the 2012 Regulations, what is “realistic” for the purposes of section 88 is not to be equated with what is more likely than anything else to occur. More than one future scenario may, in other words, be realistic. In the present case, it is simply not possible, on the facts, to

conclude that it is unrealistic to expect the appellant to carry out the development in the terms set out in the planning decision. The Tribunal is not in a position to second-guess whether an appeal against the condition would be likely to succeed. Apart from anything else, the local planning authority's likely case is unknown. It may be that, in the event, the appellant will conclude for commercial reasons that it would be preferable to avoid the delay that would be occasioned by appealing the condition, so as to commence conversion of the upper floors earlier, rather than later.

99. The appellant's case is further undermined by its stance regarding shop use of the Grosvenor. The Tribunal has not been shown the agreement for a lease with the Co-Op but it is reasonable to assume that its existence is indicative of a willingness on the part of the appellant to see residential development take place on the upper floors, with a different form of use in the lower ones. It is, therefore, difficult to see why the appellant should go to the trouble of challenging the planning condition relating to pub use, unless it was persuaded that pub use would be uneconomic; whereas shop use would be.

100. There is, however, an absence of reliable evidence to show that this is or even may be so. Since we have not seen the terms of the agreement, it is not possible to assume that the Co-Op has committed itself to any medium to long-term use of the Grosvenor as a shop. The viability of such an enterprise is any event questionable, given the evidence regarding existing rival stores. Neither of the marketing reports prepared for the appellant suggests that a pub use of the ground and basement (compared with some other trading use) would be unlikely to be economic. In short, resumption of such a pub use within five years is, on the totality of the evidence, realistic.

101. The planning position, considered together with the marketing reports, leads me to conclude that, whatever the position may have been at the review, it is no longer realistic to expect the entirety of the premises comprising the Grosvenor would be used within the next five years for relevant section 88 purposes. The appellant is, clearly, determined to see the conversion of the upper floors into self-contained residential flats and has the legal means to do so. The evidence leads me to conclude that pub use of the ground floor (with the basement) is the only realistic way in which such the pub use could return. I do not accept the Council's belated contention that a shop use of the lower floors would satisfy section 88(2). There is no evidence that, given its nature and location, a shop would serve the social wellbeing or interests of the local community, as would a neighbourhood pub.

102. I have reached these conclusions, irrespective of the current position of the Grosvenor under the General Permitted Development Order 2015. Even if the appellant could change the lower floors from pub to shop use, the evidence fails to show that the Co-Op or any other retailer would be so likely to run a shop at the property as to make a return to pub use in the next five years unrealistic.

103. I accordingly find that the requirements of section 88(2)(b) are satisfied in respect of the ground and basement parts of the premises known as the Grosvenor but not as regards the upper floors. Those floors should, accordingly, be removed from the Council's list kept pursuant to section 87.

***Decision***

104. The appeal is allowed to the above extent.

**Judge Peter Lane**

**19 July 2016**



**CAMPAIGN  
FOR  
REAL ALE**

CAMRA South Hertfordshire Branch Meeting, held on  
Tuesday 18<sup>th</sup> August 2015, 8pm, at the Swan, Wheathampstead

**Attendees**

Phil Defriez

Rob Strachan

John Kemp

**2. Apologies for absence**

**3. Minutes of meeting 14<sup>th</sup> July 2015**

Accepted

**3. Committee Members Reports and questions**

**Finance** – JL reported that Branch funds stand at £911.08

**Social Secretary** – 14 people have so far registered for the trip to Peterborough BF & the Orange Tree (Baldock). IB outlined the details of a free trip to Harveys brewery on Saturday 26<sup>th</sup> September (details to be confirmed). LM reminded the branch of its campaigning commitments for 2015. A campaigning trip has been planned for Saturday 7<sup>th</sup> November (details to be confirmed).

**Cider** – Nothing to report

**Pints of View** – A revised distribution list has been circulated. JS reported that the obituary for Colin Hunter has been very well received

**4. Business Issues**

**LOCALE** – Promotion material has been distributed to pubs concerned

**St Albans Pubs Leaflet** – JB is holding 4-5 boxes which will need to be collected for SABF for distribution as guests are leaving the festival.

**5. Diary dates**

Friday 28 <sup>th</sup> August	Beer Festival & County POTY / CPOTY	Peterborough BF & Orange Tree
Tuesday 15 <sup>th</sup> September	Branch Meeting	Old Manor (Potters Bar)
Saturday 26 <sup>th</sup> September	Brewery Visit	Harveys
Wednesday 30 <sup>th</sup> – Saturday 3 <sup>rd</sup> October	St Albans Beer Festival	Alban Arena
Friday 9 <sup>th</sup> October	Beer Tutoring & Tasting Afternoon	Five Hertford Pubs
Tuesday 13 <sup>th</sup> October	Branch Meeting	Six Bells (St Albans)
Thursday 22 <sup>nd</sup> October	Herts Liaison Meeting	Royal Oak Southwark
Saturday 24 <sup>th</sup> & Sunday 25 <sup>th</sup> October	Apple Day	Ayletts Nurseries
Tuesday 27 <sup>th</sup> October	Committee Meeting	North East Zone tbc
Saturday 7 <sup>th</sup> November	Campaigning Trip	Details to be confirmed
Tuesday 10 <sup>th</sup> November	Beer Festival Wipe Up Meeting	Six Bells
Tuesday 17 <sup>th</sup> November	Branch Meeting	Hertford Club (Hertford)
Saturday 28 <sup>th</sup> November	Autumn Ale Trail	Hertford Club (Hertford)
Tuesday 8 <sup>th</sup> December	Branch Meeting	Rose & Crown (Sandridge)

**6. Beer festival**

JB reported that festival material is now available and can be collected from the Mermaid. These include Tri-fold leaflets and posters in various sizes. Beer Mats will be available in about 3 weeks and will also be stored at the Mermaid. All committee members were asked to log onto the festival web-site and indicate which sessions they will be available for. Friday night, Saturday lunch and evening as well as Sunday takedown would be much appreciated. PD reported that 20 breweries would be represented at the Herts BOTY competition on Thursday 1<sup>st</sup> October. Anyone interested in bespoke festival polo shirts is requested to contact JK.

## Discussion Period

**Report from activation subgroup** – IB outlined what the team will be doing at SABF. Their main focus will be on Wednesday evening and will be centered around the campaigning stand in the foyer. Outside of this time others have agreed to help and support during the rest of the week. This will be done on a much smaller scale with members of the group circulating throughout the building.

**ACV's** – The Rats Castle (St Albans) application has been submitted and acknowledged by SADC. The White Horse's (Hertford) application has also been submitted to the local council by LM. The branch agreed that applications should also be made for the Red Cow (Harpenden) and also the John Bunyan (Coleman Green Lane). JK and RS agreed to be the focal points of contact for these applications with the branches full support.

## Whatpub updates

NE – 19 pubs are still to be surveyed. 4 have recently been surveyed

NW – 42 pubs are still to be surveyed

S - 3 pubs have been completed in the last month

W – 36 pubs to be surveyed. 7 have recently been surveyed

## 1. GBG 2017

The page for nominations for the GBG of 2017 is now live. Deadline for entries is 11:59pm on Sunday 4<sup>th</sup> October 2015. To date 25 nominations have been received. Envelopes notifying pubs that they have been included in GBG 2016 were distributed to those present for issuance. Boundary changes for GBG 2017 were agreed by all those present.

## 2. POTY 2015

Nothing to report

## 3. Pub News

Crown (St Albans) – Currently closed for a refurbishment

Rose & Crown (Tewin) – Has recently been refurbished

Mermaid (St Albans) – No longer accepting Wetherspoons vouchers

White Lion (St Albans) – Has recently re-opened

## 4. Brewery News

**McMullen** – Tom McMullen has been appointed as joint managing director

**Old Cross and Alecraft** – Nothing to report

**White Hart Tap** – Nothing to report

**3 Brewers** – New beer to be launched at SABF 2015

## 5. Any Other Business

NIL

The meeting closed at 10:21pm.

The next branch meeting will be held on **Tuesday 15<sup>th</sup> September 2015** at the **Old Manor (Potters Bar)** at 8:00pm

## **Statement of Support**

DATE 05/10/2016

I confirm that in putting forward the application to list the Red Cow pub as an 'Asset of Community Value (ACV)' South Hertfordshire CAMRA Branch 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.

Faye Grima  
Campaigns Officer  
Campaign for Real Ale (CAMRA)

