

Assets of Community Value: Review Decision Notice

Date of Nomination Application: 1 April 2015

Application Number: ACV1/2015

Listed Asset: The Ship

Site Address: 55 High Street

Ward: South Norwood

Nominator: Save the Ship

Date of Listing Decision: 21 May 2015

Date and Location of Review Hearing: 9 September 2015, Bernard Wetherill House, Croydon.

1. Outcome of Review Hearing: The Director of Strategy Communities and Commissioning as reviewing officer, having regard to the relevant statutory provisions within the Localism Act 2011 (“The Act”), the Assets of Community Value (England) Regulations 2012 (“The Regulations”) and in so far as is relevant, the non-statutory guidance (“Community Right to Bid: Non-Statutory advice note for local authorities”, October 2012), has considered the nomination application, the supporting documentation, the nomination report and the written and oral representations of the Owner and the Owner’s Representative and concluded, for the reasons set out in the decision notice below that:

- a. The nominator does not satisfy the requirements of a voluntary or community body
- b. The application does not satisfy the requirements of a community nomination

Accordingly:

- c. The Listed Asset should not be confirmed as an Asset of Community Value;
- d. Instructs that the asset be removed from the Council’s Register of Assets of Community Value Register and that the Local Land Charge Register be amended and interested parties notified accordingly.

2. Background to Review.

1. The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 set out the opportunities and procedures to follow for communities wishing to identify assets of community value and have

them listed.

2. Land can be entered into the List only as a result of a valid community nomination made by a community or voluntary body as defined in the legislation.
3. If the nomination is valid, the Council is required to list an asset if it is land of community value.
4. Land is land of community value if, in the opinion of the Council:
 - an actual current use (not an ancillary use) of the building or other land is one that furthers the social wellbeing or social interests of the local community; AND
 - it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community (whether or not in the same way as the current use).[Section 88(1)(a) & (b)]

OR

- there was a time in the recent past when an actual use (not an ancillary use) of the building or other land is one that furthered the social wellbeing or interests of the local community; AND
 - 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 the social wellbeing or social interests of the local community (whether or not in the same way as before).
- [Section 88(2)(a) & (b) of the Act]

5. This decision follows a review hearing on 9 September 2015 of the initial listing decision taken by the Council on 21 May to list The Ship as an asset of community value. If, as here, the owner objects to their property being placed on the List, they have a right in the first instance to a review by the Council of this decision. This notice sets out the Council's decision on review and the reasons for the outcome of the review. If the owner remains dissatisfied with the outcome, then they may appeal to the First Tier Tribunal for a decision.

3. Nominator:

The Statutory requirements which the Nominator must meet in order to be eligible to make a community nomination within the meaning of the Act are set out below with the reviewing officers' assessment of each requirement. If the Nominator does not meet the statutory requirements, there is not a valid application before the Council.

- a. Is the nominator a voluntary or community body within the meaning of Regulation 5?

The Nominator is required to be an unincorporated body of at least 21

individuals which body does not distribute any surplus it makes to its members (Regulation 5(1)(c))

The Nominator has listed 22 individuals as members and has stated that it does not distribute any surplus it makes to its members.

- b. Does the nominator have a local connection within the meaning of Regulation 4 of the Regulations and Section 89(2)(b)(ii) of the Act?
- (i) Are the body's activities wholly or partly concerned with the local area or with a neighboring authorities' area?

Assessment: Yes – activities are said to relate only to the endeavors to bring The Ship back into use.

- (ii) For a nominator within the meaning of Regulation 5(1)(c) (e) or (f) – is any surplus it makes wholly or partly applied for the benefit of the local authority area or for the benefit of a neighboring authority area;

Assessment: Yes – the nominators have stated, and there is no evidence provided to the contrary, as follows: *“Save the Ship is an unincorporated(sic) organisation formed to protect The Ship. We don't have any surplus(sic) or income. We are not for profit voluntary organisation and will remain this way, if we were trading, no member will receive any financial profit from our organisation. Any surplus will be spent on the Ship, which would run as a 'not for profit' community pub.”*

- (iii) For a nominator within the meaning of Regulation 5(1)(c) – does it have at least 21 “Local Members”?

Assessment: Local members are defined by Regulation 4(3) as meaning a member who is registered, at an address in the local authority's area or in a neighboring 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.

Three of the members of the body were not registered to vote at the addresses provided at the time of the nomination application. Accordingly the body did not satisfy this requirement at the time of application and did not satisfy the statutory requirements for having a local connection.

4. Does the Contents of the nomination meet the requirements of Regulation 6 for a Community Nomination?

The Council may only list a building or other land pursuant to a valid community nomination. The statutory requirements for a valid community nomination are set out below followed by the reviewing officers' assessment of the requirements:

- a. Includes a description of the nominated land including its proposed boundaries

Assessment: Yes however the land listed exceeds the boundaries identified in the nomination itself and to the extent that this is the case, even if listing is upheld, the portions of the property which did not form part of the nomination will not be listed as to do so would be contrary to the provisions of section 89(1).

- b. Statement of all the information which the nominator has with regard to names of current occupants of the land and the names of the current or last-known addresses of all those holding a freehold or leasehold estate in the land

Assessment: No information provided on the nomination application form in this regard and no detail provided of any investigation which the nominator may have made to ascertain this information.

- c. The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value

Assessment: Detail is provided in the nomination form submitted by the nominator of reasons why the nominator considers that the land is of community value. No assessment is made at this stage in relation to the veracity of these reasons or whether or not they satisfy the statutory requirements.

- d. Evidence that the nominator is eligible to make a community nomination

Assessment: This requirement is not satisfied. Evidence was provided that there were at least 21 members of an unincorporated body called "Save the Ship", but not that these members satisfied the electoral registration requirement at the time of application. Three of the members were not "Local Members" within the meaning of regulation 4(3) and accordingly this requirement is not satisfied.

5. Assessment

Section 89 of the Act provides that land in the local authority area may be included in a list of assets of community value only in response to a community nomination.

A "community nomination" means a nomination which is made inter alia, by a person that is a voluntary or community body with a local connection.

The Secretary of State has made regulations pursuant to section 89(2)(b)(iii), namely the Assets of Community Value (England) Regulations 2012, which make provision as to the meaning of "voluntary or community body" and the conditions that have to be met for there to be a local connection for the purposes of Section 89(2)(b)(iii) of the Act.

Regulation 4(1)(c) provides that a voluntary or community body is one which has a "local connection" which, in the case of a body within regulation 5(1)(c), has at least

21 local members. “Local member” for these purposes 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.”

Regulation 6 provides that the nomination “must” include “*evidence that the nominator is eligible to make a community nomination.*”

In other words, the Council can only consider listing an asset where a voluntary or community body which is eligible to make a community nomination makes such a nomination. Where an application is received from a body which is not, under the tests set out in the legislation, eligible to make a community nomination there is no valid application before the Council.

In light of what is set out above, the Reviewing Officer is not satisfied that “Save the Ship” was eligible to make a community nomination at the time of application to list The Ship as an Asset of Community Value. An insufficient number of members of Save the Ship were local members within the meaning of Regulation 4(3) and therefore the unincorporated body does not meet the local connection requirement within the legislation. As such, the Reviewing Officer considers that the Save the Ship application is not a valid application to nominate an asset of community value.

Given the conclusion reached above, it is not appropriate to go on and consider the remainder of the application as there is no valid application before the reviewing officer.

Review Decision

I confirm that:

Listed Asset: The Ship

Site Address: 55 High Street, SE25

Is not Asset of Community Value and should be removed from the Council's Register of Assets of Community Value and the Local Land Charge Register.

Date: 8 October 2015

Name: Sarah Ireland

Title: Director of Strategy, Communities and Commissioning

Signature:

Background Papers: Nomination form, correspondence from owners' representative, written representations, notes of oral representations at review hearing