

Vicky Eagle

From: Philip Milton [REDACTED]
Sent: 02 October 2018 13:00
To: Bev Triggs
Cc: [REDACTED]
Subject: Community Right to Bid - Ring O'Bells, PRIXFORD
Attachments: RING O'BELLS' ACV LISTING APPEAL.docx

Dear Mrs Triggs

Thank you for your notification.

I am sorry for the extra work it creates but I have to object to the nomination and request a review under the legislation.

This is on two grounds:-

1. That the nominees are not eligible
2. That more importantly the recency and also substantiation and viability tests going forward fail.

The full report is attached.

Yours sincerely

Philip J Milton
Managing director
Philip J Milton Construction and Maintenance Ltd

From: Bev Triggs <Bev.Triggs@northdevon.gov.uk>
Sent: 26 September 2018 10:39
To: Philip Milton [REDACTED]
Subject: Community Right to Bid - Ring O'Bells, PRIXFORD

Dear Mr Milton

Please find attached a letter and the decision notice in relation to the application to list the above property as an asset of community value.

A hard copy of the letter together with the decision notice will be sent to you in the post today.

Regards

Beverley Triggs
Senior Corporate and Community Services Officer
North Devon Council
Tel. (01271) 388253 (for typetalk precede with 18001)
Fax. (01271) 388328
Note: My normal working days are Mondays to Thursdays.

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APPEAL AGAINST THE LISTING AS AN ASSET OF COMMUNITY VALUE

THE RING O'BELLS, PRIXFORD, BARNSTAPLE, NORTH DEVON EX31 4DX

As the owner of the above property, I appeal against the Local Authority's renewal of the listing of the above property as an asset of community value.

I wish also to resubmit the Viability Report provided to you on 18 August but the following further notes apply, now that I have received Mr Miles' decision and reasoning.

I challenge the decision on two core grounds. The first is that the 'organisation' submitting the application fails the tests under the Localism Act 2011 and the 2012 Regulations and secondly that viability for the recency tests fails. Indeed, there has also been no provision of any current 'Business Plan' by the 'community' or if there is, it was not disclosed to me as part of the application and appeal process and that must be done now.

I shall refer to the non-statutory advice note for local authorities on the matter, the 2011 Act and the 2012 Regulations.

Item 2.4 lists the prospective nominees. It states clearly:- "It is open to parishes and community organisations, including neighbourhood forums (as constituted under section 61F of the Town and Country Planning Act 1990)."

An eclectic crowd of unnamed, unrestricted and unknown individuals who happened to attend a wholly random, open-invitation 'Pop-up-pub' event does not constitute an appropriate 'organisation' for this purpose and consequently the Council could not in fact consider the application on that basis, let alone determine it. If it does, the Council is demonstrating prejudice in its determination regardless. I appreciate the 'list' attached to the nomination was detailed but 'who' are these people? The nominee also refers to those on a mailing list of which I am one as is my son and certainly we don't consent to the nomination despite being mentioned! We (and therefore the rest on the list) were not even contacted on the matter.

There is no assurance either that any of these nominees (who must exceed the number of twenty-one demanded) are on the relevant electoral rolls unless of course they are those same names on the application if they attended a meeting and agreed with the appointments and of 'officers' to represent them.

The specific description from the Regulations is:-

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⁽⁴⁾;

(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) an industrial and provident society which does not distribute any surplus it makes to its members; or

(g) a community interest company(3).

Helpfully, the Government has issued a definition of what constitutes such a 'body' and it notes that its members would have some responsibility for its actions. Indeed, it would now have elected officers and satisfy issues such as GDPR requirements for the maintenance of data as must all unincorporated entities to be an 'organisation'. See:- <https://www.gov.uk/unincorporated-associations> There would also be authorisations given by its members or officers to the individual who completed the application itself – no such authorisation exists as far as I am aware?

I challenge that no such entity exists now and therefore there can be no application to list the Property as an Asset of Community Value. I do not believe either that section 6d of the Regulations has been satisfied in relation to the nomination. I recognise of course that a suitably qualifying entity could start an application but this is not 'it'. Have such things as minutes of any formal meeting been shared? I have not seen them as part of the application published. Is the engagement of Mr Higson as 'lead organiser' been a self-appointment? Is there a constitution and if so does 'this' take-over from the previous entity and upon what authority does it assume that?

Second and more crucially, there is the matter of viability. Here, the Act and regulations are clear and I believe the past, present and likely future fail the test. The requirements are 'the recent past and which it is realistic to consider will do so again during the next five years'.

The review decision for The Prince of Wales' Pub in Westminster helpfully clarified that there has to be a 'realistic prospect' that the building or part of it would be used to further the social well-being and interests of the local community'.

The Village Pub closed its doors on 8 April 2012 after some time when the owners were fighting the finances and finally the Bank repossessed the property. This is some six and a half years ago and cannot be considered to be 'recent past'. Consequently this core requirement fails and the present and future fail alongside that.

Regardless of this core failing which subsumes any need to be concerned about a future viability, this latter aspect fails too.

The Community Interest Group ('Save our Pub' group) which was established had a business plan and had the offer of full financing but declined to pursue the purchase of the Project when it was available to it. I have published that financing. Since that date and the sale failure, no such group has appeared to exist and no such approaches of any form have been made to ourselves as owners after one or two initial emails where our final response was ignored. This does not suggest its continuing existence and its website has disappeared. Consequently, what was 'viable' then has become even less viable as the only coherent plan with substance which could have progressed has evaporated and has not been replaced with any other.

There is also now a brand-new Community Hall in Marwood opening in 2015 and it hosts many public and community events and there is also a well-supported Church Hall there too. This new hall counters many of the comments on the application – comments we assume which were repeated from the 2013 listing application so they are false. It has hosted several licensed ‘pop-up pub’ events too. In many regards, it is competition for the viability of any new pub venture in terms of its very low-cost amenities for the community to enjoy. It seems a shame that the significant capital expended on that project could not have been used to acquire the Ring O’Bells and convert that into the resource some say they wanted but that was not to be. This replaces to great extent many of the ‘social wellbeing’ benefits noted within the past application and more centrally for the community and with better access.

It appears relevant too to note tellingly that neither the Ward Member, Cllr Joe Tucker, nor Marwood Parish Council, provided support to the application by responding to the Council’s notification of the nomination.

When it closed, the Community was very successful with its pledges to acquire the property and to run it. In fact, not only did the group raise £150,000 which was required to refurbish it and to provide working capital but Fullabrook CIC offered the whole capital sum to buy it and to rent it to the Group on complimentary terms till the Community could afford to buy the freehold. However, as noted the Group had cold feet and despite this fantastic opportunity, declined to progress.

The Receivers then had no option but to market the property as the special time concession to the ACV had passed. The six-month exclusive terms to the Group passed – and far more in fact. With very little interest however generally, the end price was below the initial price. Effectively the pub had been operating at a significant loss in the last few years. It is relevant to note that the Group in some form was still in discussions to buy the Property right up till the time it was offered to ourselves to buy – so effectively the Community Group had not only the first six month moratorium to complete but a further period afterwards of some eighteen months more to do so – but it failed. This further demonstrates a lack of viability substance and even more so as no alternative proposals have been made.

The viability of a project and whether the ‘community’ has proven its capability of acting must have a bearing on the determination. In this instance, the Community had a very generous opportunity to proceed but declined to do so and has not shown any weight of evidence that it is any different today and indeed, there is now even less appetite to do so.

The Alexandra Public House in Haringey closed in 2012. The owners wished to develop the site without any commercial usage. Upon appeal, the Inspector noted *“the primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development”*, and while some weight was afforded to the ACV listing, the Inspector found it not to be determinative. Weight was given to the additional dwelling which would be provided, the improvement in the quality of the existing flat above the pub, the reduction in noise and anti-social behaviour for the neighbours due to the change of use, and the provision of a viable use for a run down the building.

In this regard, it is noted that The Ring O'Bells is very difficult to access with a small narrow lane to it and roads which are hardly amenable to busy traffic. The community has benefited tremendously from the Pub's closure in terms of reduced road usage. Indeed, if I refer you to the objections to the small residential development by Pearce Homes at the rear of the Property, the voices concerned about the increase in road usage were clear about the problems, so to have a busy pub open at 'full pelt' again (and more – as it would need more custom than previously just to survive) would be most unwelcomed - dangerous, frankly. The villagers cannot have it both ways to suit their whims! Please refer to my earlier submitted details.

A second case supports the same assertions and considers the issue of imperative commercial viability. The Tumbledown Dick case considered a historic pub, which McDonald's agreed to purchase before the Localism Act came into force. Shortly before the First Tier Tribunal considered the listing appeal, McDonald's obtained planning permission for a change of use to restaurant/takeaway. The Judge considered that the grant of planning permission, along with the sale of the freehold, substantial expenditure being required to bring the building back into use and that it had been vacant for five years made a future community use unrealistic. Parts of Tumbledown Dick went back to the 1600s so a five year 'past' for recency was more than 'enough' too.

The Judge noted that where permission is refused, it might make it more likely that the building would be sold at a price which could support a community use or allow the continuation of the current community use. In this case, as planning permission for residential use had been obtained, it was much less likely that the Alexandra would be sold at a price low enough to allow a pub use. On this basis, the Judge allowed the appeal to remove the property from the list of ACVs. I suppose the matter of compensation from the Local Authority for the loss of value created by the ACV would be relevant too.

These cases are helpful in showing the Secretary of State's approach to ACV status. While it is a material consideration, in neither case did it result in planning permission being refused for a change of use which will effectively end the community use.

Prixford itself is very small, a sub-community without such things as a Church and it is within Marwood parish. It is noted in the nomination that walking distances to Muddiford (the nearest pub) were made (with comment about complete inaccessibility 'for anyone with impaired mobility/disability') but actually most of Marwood and the addresses of the nominees listed is some distance from the Ring O'Bells and the roads very narrow for walking so the same issues apply. In other words, a car is required to visit and indeed, the Pub would have needed the support of trade from outside of the Parish for viability regardless – so it is hardly a significant 'community asset' for such a limited number of really local residents in Prixford itself.

Indeed the Muddiford Inn is also within the Marwood Parish and equidistant to many of the residences in the very same parish but with a bigger catchment of houses and people and indeed superior road access. The Ring O'Bells is therefore redundant to the community use as the community is well provided-for in this regard and very close and indeed it could be argued that having a second hostelry could challenge the frail sustainability of the Muddiford Inn which itself has also been struggling in one guise or another for many years.

Commercial reality – the realistic prospect of future such usage

The pub would cost a significant sum to equip and to bring it up to a condition ready for use. Structurally it is not 'too bad' but easily £150,000/£175,000 would be required to be expended to meet all the regulatory demands for hygiene, safety and fire regulations, etc, as well as being attractive, redecorated and refurnished ready to receive guests. There is not a single piece of kitchen equipment. To cover such a large building and daytime and evening trade, seven days a week and holiday cover too, the staff complement would need to comprise:-

Manager/owner/administrator (doubling as bar/kitchen, etc) x 1

Chef

Second Chef

KP x 2

Bar staff x 4

Cleaner/temporary staff etc

The cost of just these staff alone, including National Insurance and holiday/sick cover and making allowances for some being part-time too would be approximately £160,000.

The VAT inclusive turnover required just to meet the staffing costs would be £325,000pa at a gross margin of 60%. That equates to £6,250pw.

Other costs are likely to be in the region of £80,000pa requiring another £133,333 of turnover or another £2,564pw of takings. This makes no provision for capital expenditure or servicing of any debts for purchase or improvements/repairs.

Based on the village size, from the 100 at say the first meeting of the Community Hall, that would be a spend of £62.50 every week from each of them and that's not allowing anything for the other expenses, profit nor repaying any capital/loans or improvements. Taking the whole Parish's population (including those attending the Muddiford Inn), each one of them would need to spend £3.50 each and every week there. Of course some others would travel in but many would never go there at all either.

You have noted that under paragraph 7.3 the Council must see evidence from the nominator of a demonstration of that realistic prospect of future use of the asset. You have noted that no up-to-date plan was provided but simply the previous one which failed – both by inaction but also demonstrating that it was not financially viable as it did not happen as it was not supported to fruition and that nothing has happened since as a result. 'Kicking the can down the road' to a future calamity is not a solution or viable plan. It cannot be imagined that suddenly something will be resurrected when the blocks were all in place for this to happen previously – but the 'proper' Community Group failed to progress the project and has done nothing since. That is not a 'realistic prospect' under the rules or guidelines. They have also noted that if they were able to purchase the property (not that it is for sale) then the Group would not be staffing it with volunteers so the above financial figures make sobering reading.

Inadequacy of support

Sadly, the pub failed through an inadequacy of trade. The locals failed to support it sufficiently and hopes of resurrecting it are wildly unrealistic insofar as the financial aspects are concerned. It is also the second pub in the Parish and unsustainable as a consequence. Its demise has, in fact, helped the Muddiford Inn to survive and that too would be challenged if it ever reopened as it would split its trade.

Now, even the Broomhill Hotel and Restaurant – a very successful venture in the Parish, is closing and being sold as a large home – because of a lack of viability and an inability of being able to sell it as a vibrant going concern. This is despite its national and international status with its sculpture garden next-door too and the trade this brings to it.

Added to this but the closure of country pubs all over has been accelerating as Drink Drive laws have bitten hard and the cost of taxis and petrol generally have rocketed. Despite the villagers' protestations that people would travel to The Ring O'Bells, fewer people are visiting country pubs and restaurants and at Trimstone where I live, the numbers visiting our great Restaurant from the local area are non-existent. Wishfulness does not pay the bills nor sustain an asset like this.

There is no reason why the recent past will not simply repeat itself on this trajectory.

Community Assets Listing - criteria failings

1. A business/building has to demonstrate a vibrant use in the recent past - the last five years. It cannot do that. Not only has it not been open in its latter time but the extent of usage 'and as a 'community asset' has been very limited.

2. Community activities take place in other facilities in the Village. These are either provided charitably and free or at very low cost (eg hiring The Village Hall at a small sum, the church halls and meeting rooms). The likelihood, expectation or need of such activities going to The Ring O'Bells is not proven and has fallen away significantly over the last five years. Indeed, the closure has demonstrated that there is no need for the Ring O'Bells as no activity has stopped as each desired use has operated in alternative sites including a great new community site no distance away from the Property.

3. Banks will not lend to projects that have no sustainability. We had awful trouble trying to buy Foxhunters Inn at West Down despite other collateral and servicing and in the end, the only way we could borrow even a little money was on a 'buy-to-let' basis on other residential properties! Buying this property was only on the back of the Bank advancing money to me privately on the back of other collateral and not the pub property itself and I could then lend it to the buying Company. This means that without a profitable history, there is no capacity to service any debt - meaning repayment of loans and interest costs. Without a benevolent fool contributing a very significant capital sum to the project, it is unviable. Had such person existed, he would have acquired the premises already and when it was for sale and so cheaply and for so long, either for himself or to sell on to the community. The pub was sold for a sum well below most houses' values in the nearby vicinity after all. It did not happen. The Community, too, did not consider an 'enabling development'.

If it was so viable then another business owner would have purchased the property and made it a successful pub once more.

4. There are no financial projections or cost schedules to accompany the application, so no viability whatsoever, just 'hopes and hype'.

5. We have a rational idea to reintroduce a proper community asset in due time. This counters the Community's application absolutely.

However, a listing of the property as an ACV will elevate the property's status effectively to bar the commercial viability of those plans and consequently stymie the idea at all. Whilst it was never the intention of an ACV listing to influence planning decisions but to give local communities the right to buy an asset within six months, clearly planning officers and LPAs are beginning to be influenced by the listings.

The impact of a listing as a 'Community Asset' would be detrimental to our plans (despite the listing's non-viability anyway, as demanded by the rules). The suggestions of our own plans cannot be used to create an ostensible viability and one which cannot exist if the ACV listing is granted!

The Property itself is also now in the centre of a residential area following the large development completed to its rear.

6. Under 4.3(ii) of the 'Community Right to Bid Policy', the campaign group does have to demonstrate a 'realistic prospect' that within the next five years the 'use' could resume. They have failed to do this. They have not given any comment on the financial aspects despite the Council's own guidelines to that end - either the purchase, the renovation and significant costs of reequipping or more importantly the running of the property as it is (was) as a 'community asset'.

They have provided no current financial summaries, cashflow statements or anything to substantiate the application. Under 7.2, 'realistic prospect' is defined as 'the continued or future use of the asset, includes in particular, the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use. Under 7.3 the Council's rules actually list the expected evidence to satisfy this clause. It requires - an outline of how the community body would raise the funds to purchase it, a business plan for the day-to-day running and upkeep and evidence of the community's ability to fill volunteer positions. The application must fail on that premise regardless of the fact that it has been closed for too many years (six and a half now). The applicants also have to prove (factually or on the balance of probabilities) a vibrant 'recent past' which they have not.

7. Case histories. The Borough Arms in Forches, Barnstaple had only been closed for one year and was rejected by the Council as having 'no realistic prospect of it returning to community use within five years'. However, in many respects it was a far more suitable case for the listing. It was a much smaller property in a significantly sized hinterland (35/40,000 people) and the property was not in disrepair.

We do not intend to sell the Ring O'Bells and even if we plan a development proposal, that is likely to take a few years to formulate so that would mean the property would have been closed for eight or more years. If anything, the time to consider a community bid was in 2013.

8. We have no evidence that a 'group' presently exists. The successful campaign was several years ago and now even its website has been taken down. The application refers to people on a mailing list as participating members – but I too am one of those. It is also noted that the Community Group has confirmed that it has 'no current plan to make an additional bid to purchase the Pub'.

CONCLUSION

What is curious in this respect is that our anticipated enabling residential development plans for the site include the provision of some form of community facility - but much smaller and thus sustainable, with living accommodation to enable owner occupation to be feasible. Whilst we have not progressed the ideas yet, this will also help the Village's requirements to provide further residential accommodation under the Local Plan (and there is no neighbourhood plan we understand). It is also noted that the applicants have only 'imagined' what our plans might be in that they have not engaged with us since 2015 despite what they suggest in their renewal application now. I have never met Mr Higdon nor had any communication with him.

It should be noted too that of the thousands of pubs now listed as ACV, whilst there have been hundreds of community groups launched to progress interest in 'their' pub, only a mere handful have materialised into action of any form. You have noted the successes but there have already been several failures too. Sadly too, too often those who shout the loudest have the shortest arms and the deepest pockets and so funding fails – see <https://www.lincolnshirelive.co.uk/news/local-news/its-real-shame--fight-164181> as an example. Listing the Ring O'Bells as an ACV when I have no intention of selling it will only stifle the opportunity to develop the site along the lines I have envisaged with some form of community amenity being provided too. Otherwise, its dereliction in time will simply render it as a redundant brownfield site for overall residential development in several years' time and that scenario is more likely under an ACV listing regardless.

WE REQUEST A REVIEW OF THE LISTING OF THE RING O'BELLS PRIFORD AS A COMMUNITY ASSET AS DESCRIBED UNDER THE LEGISLATION and as it fails the listing criteria in view of the time of closure and that such listing will be a constraint upon the future usage of the Property and its potential commercial viability of a small and honed activity which would enhance the Community and its offering.

Managing Director – Philip J Milton Construction and Maintenance Ltd

Vicky Eagle

From: Philip Milton [REDACTED]
Sent: 02 October 2018 14:01
To: Bev Triggs
Cc: [REDACTED]
Subject: Ring O'Bells
Attachments: IMG-0033.JPG; IMG-0034.JPG

Dear Mrs Triggs

ACV Review

Just to note the extent of commitment [REDACTED] it's a small world in North Devon!

Please add this 'evidence' to the Review file as a demonstration of intent for the longer—term interest in the Community.

Yours sincerely

Philip J Milton

From: [REDACTED]
Sent: 02 October 2018 14:01
To: Philip Milton [REDACTED]
Subject: In case they're needed...

[REDACTED]

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