First-tier Tribunal
(General Regulatory Chamber)
Community Right to Bid

Appeal Reference: CR/2016/0015

Decided without a hearing
On 28 November 2016

Before

JUDGE ANTHONY SNELSON

Between

TRUSTEES OF THE SUNDORNE ESTATE

Appellants

and

SHROPSHIRE COUNCIL

Respondents

DECISION

The decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This is the appeal of the Trustees of the Sundorne Estate against the decision of the Respondents, Shropshire Council, given in a document dated 26 July 2016, to refuse their request for a review of their decision of 9 March 2016 to include the the De Quincy Fields in the village of Upton Magna ('the Fields') in their list of assets of community value.

2. In *BHL v (1) St Albans City & District Council (2) Verulam Residents Association* [2016] UKUT 0232, Upper Tribunal Judge Levenson offered this summary of the nature and effect of the assets of community value ('ACV') legislation:

> **3. The Localism Act 2011 requires each local authority to keep a list of land (including buildings) in its area which is of community value. The effect of listing (which usually lasts for five years) is that generally speaking an owner of listed land wishing to sell it must give notice to the local authority after which any community interest group has six weeks in which to ask to be treated as a potential bidder. If any such group does so the sale cannot take place for six months, during which the group may come up with an alternative proposal. At the end of the six months it is up to the owner whether to sell and to whom and on what terms. There are arrangements to compensate owners who lose out financially in consequence of the listing.**

3. The appeal came before me on 28 November this year for consideration on paper, the parties having agreed that it should be determined in that way.

4. A slim agreed bundle of documents was produced which included the formal documents generated by the listing process, the review and the appeal before the Tribunal, written submissions dated 16 September by Mr Robin Hopkins, counsel for the Respondents, a reply dated 4 October to those submissions by Walton & Co, the Appellants' solicitors, and a witness statement dated 24 October by Mr Christopher Edwards, the Respondents' Head of Infrastructure and Communities.

The legislation

5. Section 88(1) of the Localism Act 2011 ('the Act') includes:-

> **(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.**

6. Under the Act, s90(2) and (3) a local authority must consider any 'community nomination' and must accept it if the land nominated is within the authority's area and is of community value (under s88). If the nomination is accepted the authority must cause the land to be included in its list of assets of community value (*ibid*, subsection (4)).

The issue

7. The only issue in this appeal is whether, at the time of listing, there was an actual, current, non-ancillary use of the land that furthered the social wellbeing

or social interests of the local community. If there was not, the ground relied on by the Respondents was invalid and the appeal must succeed; if there was, the listing was proper, there being no dispute that, on this footing, it would be realistic to think that the use can continue (see the Act, s88(1)(b)).

8. The Respondents' case was that the Fields served as a recreational amenity at the time of listing and were expected to continue to do so. The Appellants contended that there was no evidence of an existing use within the terms of the Act, s88(1), the use of the footpaths alone not warranting listing of the entire space (see *Banner Homes Ltd-v-St Alban's City & District Council* CR/2014/0018). The Respondents accepted the *Banner Homes* point but stood by their central case, relying in particular on the evidence in Mr Edwards's witness statement.

The essential facts

9. The Fields are known locally as the village green. They are located within a housing development for which planning permission was granted in 2011 and which was completed quite recently. The plans for which permission was given referred explicitly to the creation of a village green.

10. A new footpath crosses the Fields. The public has unfettered access to the entire area.

11. The space has been laid out in accordance with the planning permission. It is mostly grassed and some trees have been planted.

12. Mr Edwards visited the site on 8 July 2016 and found that it was "reasonably maintained" and that it appeared to be a public open space within a new housing development. He recorded nothing incompatible with the representations of 17 January 2016 submitted by the Upton Magna Parish Council ('the Parish Council') in support of the nomination for listing, which included this:

> **The area ... is used as a general play area and open, all-purpose, safe, recreational space by children of the village.**

13. Mr Edwards visited the Fields again on 5 October 2016. He noted that the area was well maintained and the grass had recently been cut. He saw four children playing football there. The view which he had formed in July was unchanged. Photographs showing the children at play are appended to his witness statement.

Conclusions

14. I am satisfied on the evidence that at the time of listing the Fields amounted to a local amenity within the terms of the Act, s88(1)(a). I accept the evidence of Mr Edwards and I further find that the use which he described had existed since well before 17 January, when the nomination form was completed. There

is no reason to doubt what the Parish Council said in support of the nomination. The Appellants' case rests on mere assertion and, even if they are right in their claim in the notice of appeal (dated 23 August) that the site had become somewhat unkempt and the grass had been cut only "recently," those circumstances would not begin to call into question the proposition that a use within the Act, s88(1)(a) existed and continued. It inevitably follows from my findings of fact that the appeal must be dismissed.

Signed A-M. Snelson,

Judge of the First-tier Tribunal
Date: 16 December 2016