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Date: 20 June 2019

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Dear Sir/Madam

Asset of Community Value Nomination - The Foxlydiat - Response from Owner

1. We act for Premier Inn Hotels Limited, the Owner of the nominated land.
2. My client has been forwarded the Asset of Community Value (ACV) nomination for the Foxlydiat, Birchfield road, Redditch. With a cover letter dated 7 June 2019. The cover letter requires any response from the owner to be submitted within 2 weeks of the date of that letter.
3. The cover letter says that the nomination is for the Foxlydiat which is a public house, but the Nomination Form and plan attached to it are actually for the restaurant, restaurant grounds, hotel, hotel grounds and additional land to the west.
4. In numerous places in the Nomination Form the applicant refers to Hotel use. This includes sections A5, B1 and B4.

Hotel

5. The Brewers Fayre restaurant (shown outlined in blue on the attached plan) is part of the same building as the Premier Inn Hotel. (shown outlined in white)
6. The ACV process is governed by the Localism Act 2011 (LA2011) and the Asset of Community Value (England) Regulations 2012 (ACV Regs).
7. Schedule 1 of the ACV Regs is titled "Land which is not of community value (and therefore may not be listed)" and refers to reg 3.
8. Paragraph 1 of Schedule 1 says:

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"(1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence." [is not of community value and may not be listed]

9. Further all the nominated land is owned by a single owner and "every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.", the requirement in Sched 1 P1(2) ACV Regs

10. There is a further requirement in Sched 1 P1(5) ACV Regs. This starts:

"Land which falls within sub-paragraph (1) may be listed if—"

10.1. It is worthy of note that this refers to land. S108 LA2011 defines land as including part of a building (emphasis added) and does not refer to a building (i.e. the whole building which the draftsman could easily have specified).

10.2. The conclusion from this is that even if the restaurant is listed, the grounds and parts of the building that are associated with the non-restaurant use (i.e. the hotel use and the Overgrown Land (see below)) should not be listed. This would mean the land outlined in green, the land outlined in white and such parts of the carpark as are for hotel use would not be included in any listing.

11. Sched 1 P2(a) ACV Regs states:

"(a) "residence" means a building used or partly used as a residence;"

12. Sched 1 P2(b) ACV Regs states:

"(b) a building is a residence if—

...

(iii) it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants"

...

13. The Premier Inn Hotel is located in the same building as the Brewers Fayre restaurant. It is used as a hotel. So by Sched 1 P2(b) ACV Regs coupled with P1(1), the building cannot be listed.

The Restaurant and Hotel Grounds

14. Section B4 of the application form deals with the ways that the nominated land is said to currently further the social wellbeing or social interests of the local community and also how it may do so in the future.

15. It is worthy of note that the meeting rooms and restaurant facilities are mentioned, but nowhere is the outdoor space referred to.



16. The inescapable conclusion from this is that the outdoor space does not currently (or in the future) further the social wellbeing or social interests of the local community. Given this, it is clear that the outdoor space should be excluded from any listed area.
17. The hotel grounds (shown as part of the white outlined area) are only used as part of the hotel. The Hotel grounds are separated from the restaurant grounds by a high wooden fence. The hotel grounds are in no way used for any use which furthers the social wellbeing or social interests of the local community (either currently, in the past or in the future). The hotel facilities are not mentioned in the nomination and so it is only right that the hotel grounds should be excluded from any listed area.

Community Use

18. Section B4 says that the Foxlydiate is the only pub in the vicinity, yet the Rose and Crown (Sizzling Bar and Grill Group) on Heathfield road is ¼ mile away via a well-made and well-lit main road. This by any measure is 'in the vicinity'.
19. Section B4 also says that "*it is the only worthwhile meeting place with catering facilities*". Once again, it must be pointed out that the Rose and Crown (which is only ¼ mile away) serves food and, in fact, has an extensive menu.
20. Section B4 says that the meeting rooms are used by local groups. The Regional Operations Manager has confirmed that the rooms are only booked:
 - 20.1. Slimmer World Every Monday and every Wednesday .
 - 20.2. Probus group Redditch 1 x per month on a Tuesday.
 - 20.3. Probus Bromsgrove Thursday 1 x per month.
21. This is a *de minimis* use and certainly insufficient to satisfy the requirements of S88(1)(a) LA 2011.

Overgrown Land

22. The attached plan shows an area of land to the western edge of the site. This area is outlined in green on the attached plan and is known as the **Overgrown Land**.
23. The Overgrown Land is included within the area of land that has been nominated as an ACV.
24. The Overgrown Land is a distinct area of land that the general public (users of the restaurant and hotel) do not have access to.
25. The Overgrown Land is not mentioned anywhere in the application form as being an area of land which is used for community uses.
26. The ACV appeal case concerning the *Swan Inn* at Blakedown (CR/2015/0013) looked at an area of land that was separate from the main nominated area. In that case the chamber president Judge Peter Lane



looked at the functional and physical relationship between the 'Wooded Area' and the pub. The Judge ruled (at para 14):

"14. *There is, I find, no functional relationship between the disputed wooded area and the pub etc. The evidence shows clearly that no actual use is made of that woodland by customers of the pub (or by its staff).*

" ...

27. In that case it was decided that the 'Wooded Area' would not be included in the listed area and that the tribunal (and by extension the Council) have the power to modify the nominated/listed area.

The Layout of the Building

28. The area above the restaurant is a mixture of hotel bedrooms and staff accommodation. It is therefore clear that a vertical section of the building taken above the restaurant would include the residential elements of the hotel use (which are exempt from listing).

Nomination Form

29. In section A3 of the Nomination Form the nominator (Brockhill Residents' Association (**BRA**)), states that they are a Community Interest Company (**CIC**). A CIC is a special form of company formed under the Companies Act and registered with Companies House. It has not been possible to locate any records for BRA and it is therefore suggested that they are not a CIC. The requirements of s89 LA2011 are strict. BRA are not a CIC (as they state) and so the nomination is invalid.

30. Section A5 is intended to be where the nominator explains their local connection. This is required to demonstrate that the nominator (in this case BRA) satisfies reg 4 ACV Regs. BRA have not done this beyond saying that members drink at what they call a pub (but which is in fact a restaurant). This is not sufficient to establish a local connection. The statutory test is that "(a) *the body's activities are wholly or partly concerned ...*".

31. Merely saying that members drink at an establishment is not sufficient to establish that BRA's *activities are wholly or partly concerned* with the local authority's area. This is a mandatory requirement for a nominator and nowhere do they indicate how they satisfy it. Instead they have used this section to provide information that is more suited to section B4. Section A5 does not provide the required evidence that the nominator satisfies this mandatory requirement. The nomination is therefore invalid.

32. Section A6 of the Nomination Form asks the nominating body to confirm that its rules provide that surplus funds are not distributed to members. The section describes how funds are raised, but does not provide the required confirmation (another mandatory requirement). The nomination is therefore invalid.

33. Section A8 of the Nomination Form indicates that a copy of the 'Constitution and/or rules' of BRA were provided with the nomination form. For a CIC, the Memorandum and Articles must be provided. This further indicates that the nomination is invalid as it was not made by a CIC.



34. The Constitution/Rules provided by BRA under section A8 have not been provided to the Owner. Accordingly it has not been possible to verify that they meet the required statutory requirements. This has significantly prejudiced the Owner's ability to respond to the nomination.

Planning Policy

35. The ACV regime is not directly linked to the planning regime. However, according to guidance, listing as an ACV may be a material consideration in a planning decision.
36. We live in a time of a national housing shortage with the government striving to encourage the delivery of increased amounts of housing.
37. The development plan in this instance is the Bromsgrove District Plan, adopted in January 2017. Within the Plan, the entire nomination site is specifically allocated as part of RCBD1 Site 1 Foxlydiate, which "*will include approximately 2,800 dwellings, a first school and a local centre, including associated community infrastructure*".
38. Policy RCBD1 has 15 criteria regarding the proposed delivery of the allocation, none of which refer to the retention of the restaurant or it having particular significance in relation to the delivery of the allocation, or any community value or function, hence its retention is not directed or suggested by the Policy.
39. If it was considered that the restaurant had any community value, or should be retained for any other reason, Policy RCBD1 would have been explicit in these terms, and it is not.
40. Whilst any listing is only a material consideration in the planning balance, listing as an ACV has the potential to de-rail the delivery of much needed (and allocated) housing.
41. Application 19/00615/OUT has been submitted and it is suggested that the ACV nomination is merely an attempt to make that application (and any subsequent one) unsuccessful and to prevent an allocated site coming forward.

Conclusion

42. The Hotel and its grounds are a residential use and so cannot be listed.
43. The Overgrown Land is not functionally related to the community uses and so cannot be listed.
44. The Restaurant is part of the same building as the Hotel and so should not be listed.
45. The outdoor area associated with the restaurant is not mentioned in any way in the Nomination Form and are therefore not of community value. This outdoor area should not be listed.
46. The Regional Operations Manager has shown that the community use of the restaurant is *de minimis*, so it should not be listed.

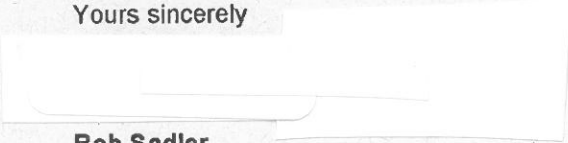
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47. The site is allocated for housing in the Local Plan and listing may frustrate the delivery of this allocated site.

Yours sincerely


Bob Sadler
Associate
for DWF Law LLP

Enc Annotated Site Plan