

Community Right to Bid

Review of Listing Decision – High Street Car Park, Ilfracombe (“the Car Park”)

Listing Decision (“original decision”) Date – 7th June 2021

Date of Review Request – 8th July 2021

The original decision focussed on three main considerations:- (1) has the nomination been made by an appropriate body, (2) Is the nomination complete, and (3) Does the asset qualify as being of “community value”. The request for a review of the original decision has been made by the owners’ solicitors and the reasoning behind that request is set out in the letter dated the 8th July 2021. That letter makes clear that there is no dispute as to the reasoning or conclusions drawn in the original decision in relation to the first 2 considerations referred to above. For the sake of brevity, this review will therefore focus on the third main consideration:- does the area of land known as High Street Car Park, Ilfracombe qualify as being of “community value”.

Legislation

Section 87 of the Localism Act 2011 states that local authorities must maintain a list of land in the area that is land of “community value”.

Section 88 of the 2011 Act provides the definition of land of community value. The section is set out in the review request but is repeated here:-

“(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”.

Therefore, to qualify as land of community value because of an existing use, the land must be used for a purpose that furthers the “social wellbeing or social interests on the local community”

There is no definition of “social wellbeing” within the 2011 Act but s88(6) provides a definition of “social interests”. It states that social interests includes cultural interests, recreational interests and sporting interests.

Finally, the legislative provisions set out above make clear that the use cannot be ancillary to another use.

Representations

The nomination was originally made by Ilfracombe Town Council. There are facts set out within the nomination with which the owner takes issue. These are not directly relevant but relate to the size of the car park and its distance to the High Street.

The representations made by the Town Council indicate that the Car Park serves a vital role for the High Street, supporting businesses and shops by providing car parking for shoppers, visitors, residents and businesses. In particular the nomination makes the point that there is a need for car parking to support the High Street, its businesses and economy and to provide a safer and better pedestrian experience.

The point is also made that the High Street sits within Ilfracombe East Ward which is listed as being within the top 5% of socially and economically deprived wards in England.

Further representations are made regarding the risk of the Car Park being developed. In my view, these points are not relevant. Listing an asset does not stop it being developed in the future, it simply provides a mechanism by which the asset could be purchased by a community group.

The owners state that the use of the Car Park by visitors, residents, shoppers etc. does not satisfy the requirements of s88 above. They also point to the Council’s policy which states that:- “A property that enhances the social interest or community wellbeing of the local community is one that its absence would deprive the local community of a building or property which is essential to the special character of the local area and provides a place to meet and socialise, place to shop, recreational, sporting or cultural facility or a place

used to provide a community service". The owners state that the Car Park is not essential to the special character of the area and does not provide a place to meet and socialise etc. They go on to state that the absence of the Car Park would not deprive the community of a community service given that it is a private car park.

The wording of the policy referred to above needs to be considered in the light of the decision in *Dunn v North Devon Council* CR/2017/0008 where the court concluded that there is no requirement in the legislation for the asset to be "essential to the special character of the area".

It is clear that the "health" of a High Street or town shopping area has an impact on communities. A report published by Public Health England "Healthy High Streets – Good Place Making in an Urban Setting" supports the view that healthy and vibrant high streets have a positive impact on communities. The introduction to the report states:- *"Healthy high streets can be considered an asset that promotes and improves the health of local residents and the wider local community"*

High streets tend to have a number of uses within them. In particular, within Ilfracombe High Street and the area supported by the Car Park, there exist community facilities, a cinema, council offices, banking facilities, pharmacies, cafes, pubs and shops. Without drawing any conclusions in respect of individual assets, all of these uses contribute to and further the social wellbeing of the area. A healthy, functioning town centre also serves as a meeting and social centre outside of those individual uses. The question that has to be addressed is whether the Car Park also satisfies that test by being an integral part of the range of uses and services in the area and/or it has a use that furthers the social wellbeing or social interests in its own right.

Whilst I don't have statements from individual users of the car park, it is clear from the nomination that users of the car park do so to enable them to access the range of services within the area, many of which, as established above, will further the social wellbeing or social interests of the area.

In that regard, this situation is very similar to the case of *Trouth v Shropshire Council* CR/2015/0002. In that case, a car park that served a village hall and a playing field was listed in its own right as an ACV. The court concluded that the car park provided a convenient means of access to the wide range of social activities taking place in the adjoining village hall and therefore found that the car park furthered the social wellbeing and social interests of the area.

In this case, whilst the area around the Car Park does not exclusively contain social activities, there is no doubt that the Car Park will be used by those that are using the high street and town centre for social activities, including activities that fall within the definition of “social interests” in s88(6) of the 2011 Act.

My conclusion therefore is that, on balance, the Car Park has been correctly listed and that it does further the social wellbeing or social interests of the local community.

Ken Miles

Chief Executive

31st August 2021