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[REDACTED]
London Borough of Barnet
North London Business Park
Oakleigh Road South
London
N11 1NP

By Post & Email: Community.Rights@Barnet.gov.uk

22 June 2016

Our Ref: [REDACTED]

Dear Madam

COMMUNITY ASSET NOMINATION – BUILDERS ARMS PUBLIC HOUSE, 3 ALBERT ROAD, NEW BARNET, BARNET, EN4 9SH

We act for Greene King Retailing Limited ("**Greene King**"), the freehold owner of the Builders Arms Public House, 3 Albert Road, New Barnet, Barnet, EN4 9SH ("**the Property**").

We refer to your letter dated 31 May 2016 informing our client of the nomination of the Property ("**the Nomination**") as an Asset of Community Value ("**ACV**") pursuant to the Community Right to Bid provisions of the Localism Act 2011. We have been provided with a copy of the redacted nomination form ("**the Nomination Form**") and supporting documents by the London Borough of Barnet ("**the Council**").

We note that the Nomination has been made by the Enfield and Barnet CAMRA Branch ("**the Branch**") on behalf of the Campaign for Real Ale Limited ("**the Company**"). We are instructed to challenge the Nomination made by the Company, and by way of comment on behalf of Greene King, we have the following points to make to the Council in connection with the nomination of the Property as an ACV, in particular in relation to (a) the invalidity of the Nomination and (b) the various demerits of the Nomination:

Invalid nomination – legal framework

1. Land may only be included in a local authority's list of ACVs in response to a **community nomination** (our emphasis) made by a parish council or a voluntary or community body with a local connection (s.89(1)(a) and (2)(b) of the Localism Act 2011 ("**the Act**")).

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2. It is a mandatory requirement of regulation 6(d) of the Regulations that a community nomination must include "*evidence that the nominator is eligible to make a community nomination*". This is so that the Council may assess whether or not any nomination made is indeed a community nomination. If it is not, because there is no evidence provided with the nomination to show that the nominator is eligible to make a community nomination, then the nomination must be an unsuccessful nomination, because it is not a community nomination, and the Property added to the Council's list of unsuccessful nominations (s.90(5) of the Act).
3. Under section 89(2)(b) where a community nomination is made otherwise than by a parish or community council it may only be made by a person that is a voluntary or community body with a local connection (our emphasis) (s.89(2)(b)(iii) of the Act).
4. Regulation 5 then defines "*a voluntary or community body*", as (inter alia) a company limited by guarantee which does not distribute any surplus it makes to its members (Regulation 5(1)(e)).
5. Regulation 4 states that a body has a "*local connection*" if its activities are wholly or partly concerned with the relevant local authority's area or with a neighbouring local authority's area (Regulation 4(1)(a)).
6. Regulation 4(1)(b) imposes additional requirements on certain voluntary or community bodies, including companies limited by guarantee, such that these bodies will only have a "*local connection*" if any surplus made is wholly or partly applied for the benefit of the relevant local authority's area or for that of a neighbouring local authority.
7. Before even considering the merits of a nomination, a local authority must be satisfied that the nomination is a community nomination. A nomination is a community nomination if and only if the Company satisfies the relevant statutory conditions. In order that a local authority may be satisfied that a Company satisfies the relevant conditions, there is a mandatory statutory requirement that a Company supplies evidence that the conditions are satisfied. A local authority has no discretion to disapply the evidence requirement.

Eligibility to nominate- Invalid Nomination

8. Our client has been provided with an incomplete version of the Nomination Form. We note that the following details have been withheld in consequence: (a) the name, address, and contact details of the individual that has submitted the nomination; (b) his/ her relationship to the nominating organisation, and (c) the date of the Nomination Form. This is unacceptable and it has prejudiced our client in its consideration of whether the nominator is eligible to make a nomination, whether the person submitting the nomination had authority to do so, whether the person submitting the nomination is a "member", director or employee of the nominating organisation, and whether the Council is out of time for making a decision. Pursuant to Regulation 8 of the Asset of Community Value (England) Regulations 2012, a local authority which is considering whether land nominated by a community nomination should be included in the list must give the information that it is considering to the owner of the land. Councils should not be making a decision as to whether a property should be listed as an ACV in a secretive manner; the decision-making

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process should be open, especially where a Council is performing a quasi-judicial role, as it will be here, which will impact on a private property owner's rights to deal with its property, and cause damage to the value of its interest.

9. Therefore we request that the Council provide us with a complete copy of the Nomination Form, in order that our client can make further representations, if necessary, regarding the eligibility of the nominator to make the nomination. For the avoidance of doubt, the identity of the nominator is not a confidential matter and our client is entitled to be provided with such information, as a matter of natural justice.
10. In this case it appears that the Nomination Form has been submitted by the Branch on behalf of Campaign for Real Ale Limited ("the **Company**"), as the nominator is identified as being a "*Company limited by guarantee*" (page 1 of the Nomination Form). Further the Company has provided a copy of its Articles of Association in support of the Nomination.
11. As it appears that the Company has made the Nomination, it must be concluded that the Nomination is not a community nomination, and the Nomination must be rejected as having been void from the outset. We explain why, below.

Eligibility to nominate- the Company

12. Critically in this case the Nomination (including the articles of association of the Company) fails to give any indication whatsoever that the Company has a "*local connection*" with land in the local authority's area as required by s. 89(2)(b)(iii) of the Act. The Company states in the Nomination Form that, "*CAMRA is a company limited by guarantee and is not profit distributing. CAMRA's National surplus is not distributed to its members and the individual CAMRA Branch activity is wholly or partly applied to the local authority area where the asset nominated will be located*". It is clear from the Act that a local authority may only include land in its list of ACVs in response to a community nomination, made by a voluntary or community body whose activities are wholly or partly concerned with the local authority's area (regulation 4(1) of the Regulations).
13. In the absence of any evidence or explanation as to how the Company's activities may be concerned with the local authority's area in whole or in part, any nomination by the Company fails to constitute a community nomination for the purposes of the Act and the Nomination must therefore be rejected.
14. Even if the Company did subsequently try to cure the defect, being the absence of evidence of a local connection, the Company's objects as provided by clause 2 of its Articles show that the Company was not established for the purpose of anything to do with the local authority's area but rather "*to protect the interests of all those who wish to drink real beer*", "*to campaign for an improvement in the quality and variety of British beer*", "*to draw to the attention of members and the general public those places where real beer can be found*", "*to promote and foster activities concerned with the consumption of good quality beer*", "*to campaign for the retention and reinstatement of the facilities of the traditional British pub including the public bar*", "*to ensure in every manner possible that producers and retailers of beer act in the best interests of the customer*", "*to ensure that the knowledge and expertise of brewing real beer is kept alive*", "*to improve the standards of*

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food, drink (whether intoxicating or not), service, hygiene and facilities in all establishments ...”, “to publish and issue to members magazines or newsletters”, “to publish or sponsor the publication of books, articles, magazines, photographs, films, radio, television and internet content programmes.....”.

15. The Company’s objects are set out at Article 2 of its Articles, provided in support of the Nomination. However it is clear that the Company’s objects, its purpose and its activities, have no particular local connection, to either this Property or any other.
16. Further, the Company has not, and cannot, satisfy regulation 4(1)(b) of the Regulations, since any surplus made by the Company is not wholly or partly applied for the benefit of New Barnet. Rather, any surplus it makes is for the benefit of furthering its objects, which are national campaigning activities (see Article 2 of the Company’s Articles of Association, as set out above).
17. To be clear, the activities of the Branch cannot be the activities of the Company, because they are not one and the same thing (the Branch is a collection or body of members of the Company, as made clear in the Articles of the Company), and the surplus of the Company is not the surplus of the Branch, which may or may not operate its own finances.
18. Accordingly, the Company has not made a valid nomination.

Invalid nomination – hybrid nomination

25. The Nomination Form refers to Judge NJ Warren’s decision in St Gabriel Properties Limited –v– London Borough of Lewisham and South East London Branch of Campaign for Real Ale CAMRA [2014] UKFTT CR/2014/0011 (GRC) (copy enclosed) and asserts (incorrectly, see below) that “N.J. Warren ruled that local branches of the Company were eligible community groups able to nominate Assets of Community Value in their local area”. This would suggest that the Branch is attempting to make the type of “hybrid” nomination countenanced by Judge NJ Warren in St Gabriel.
26. In St Gabriel Judge NJ Warren applied the Regulations so as to treat South East London Branch CAMRA and the Company in a hybrid manner so that the nominator could rely on both the Company’s status as a company limited by guarantee which does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e) and on South East London Branch CAMRA’s own activities in order to satisfy Regulations 4(1)(a) (the requirement that a body’s activities be wholly or partly concerned with the local authority’s area or neighbouring area) and 4(1)(b) (the requirement that a body distributes its surplus wholly or partly for the benefit of the local authority or neighbouring authority’s area).

St Gabriel was wrongly decided and runs contrary to the clear intention of Parliament

27. We consider the point regarding the treatment of the Company and its local branches in a hybrid way to have been wrongly decided. It is important for the Council to note that the decisions of the First Tier Tribunal do not create binding precedent. The decisions of the First Tier Tribunal are not therefore binding on any court or decision maker, including the

Council. As such the Council is in no way compelled to follow the erroneous decision in St Gabriel nor, we argue, should it.

28. In the recent First Tier Tribunal hearing in the appeal case of Hamna Wakaf Limited –v- (1) London Borough of Lambeth and (2) Campaign for Real Ale Limited – south west London branch (the status of which group was in issue in the appeal proceedings) George Lawrence QC appearing for the respondent Council and David Elvin QC appearing for the appellant each agreed with the other that St Gabriel was wrongly decided, before Judge Peter Lane took the opportunity of reminding the public that the Tribunal could not bind itself, let alone any other person. Specifically, Mr Lawrence and Mr Elvin, two eminent silks, agreed that a company could not rely on the activities of a third party to satisfy the “*local connection*” condition at regulation 4(1)(b) (see above), and it was common ground that the Company does not have any local connection.
 29. This “hybrid” treatment was never the intention of Parliament. The relevant provisions of the Act and of the Regulations are clear and precise and leave no room for interpretation or judicial, or quasi-judicial, imagination.
 30. S.89(2)(b)(iii) states that a community nomination may be made by “*a person that is a voluntary or community body with a local connection*” (our emphasis). It is no accident that the relevant provisions of the Act (and of the Regulations) are drafted in the singular. On any literal, commonsense or grammatically correct reading of this provision the conditions are twofold and cumulative - it must be possible to say of the body that makes the nomination that it is “*a voluntary or community body*” (as defined by Regulation 5) and, of the selfsame body, that it has a “*local connection*” (as defined by Regulation 4). It is the voluntary or community body that must have the local connection, not some other body.
 31. This is the literal, ordinary and natural meaning of the words of the Act in context. It is a well established principle of statutory interpretation that it is only in certain circumstances - where a literal interpretation of the relevant wording leads to an absurd result, for example, or where the wording is so ambiguous as to defy a literal interpretation - that the courts should look beyond the literal, ordinary and natural meaning of the words to give effect to Parliament’s intentions.
 32. No such ambiguity or absurdity exists in this case. Indeed the hybrid interpretation itself leads to absurd results in that the Company and the Branch are quite clearly separate entities, both as a matter of law and of common sense. The Branch and the Company are not the same organisation.
 33. The Company is a company limited by guarantee whose objectives (as clearly stated in the Articles of Association submitted with the Nomination Form) are national campaigning activities. The Company’s decisions are made by its board of directors in accordance with the processes prescribed by the Companies Act 2006 and its own constitution. The Company is a separate entity with a legal personality and the ability to enter into binding agreements in its own name, through its directors.
 34. The Branch is an unincorporated aggregation of individuals, with no authority to bind the Company generally or to partake in the Company’s decision-making process. The Branch
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has no separate legal personality and cannot enter into binding agreements in its own name, let alone in the Company's. The copy of the Nomination Form provided to us by the Council has been redacted, but it seems extremely likely that the individual responsible for completing, signing and submitting the Nomination Form was not and never has been a director of the Company (we enclose a list of the Company's past and present directors for the Council's attention).

35. To interpret the relevant statutory provisions as allowing for the type of hybrid nomination countenanced by the Judge NJ Warren in *St Gabriel* is to stretch the meaning of the legislation far beyond any that can reasonably be inferred or intuited from the legislation itself. It follows that the Nomination can only be made by either the Company as a company limited by guarantee, or by the Branch as an unincorporated body on behalf of the Company. It cannot have been made by both.

There is insufficient eligibility evidence to satisfy the "hybrid" approach

36. It is extremely important for the Council to note that, even were *St Gabriel* decided correctly or in any way binding upon the Council (and we submit that neither is the case, see above), the "hybrid" approach does not obviate the requirement for the nominator to provide evidence of its eligibility to make a community nomination. The "hybrid" approach still requires the application of the Act and of the Regulations and by no means the "passports" the Company's branch nominations through the eligibility criteria. The eligibility criteria must still be applied on a case by case basis to each and every nomination.
37. In terms relevant to the current Nomination, the Branch would therefore have had to provide evidence of the Company's status as a company limited by guarantee that does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e), and evidence of the Branch's activities in order to satisfy Regulations 4(1)(a) (the requirement that a body's activities be wholly or partly concerned with the local authority's area or neighbouring area) and 4(1)(b) (the requirement that a body distributes its surplus wholly or partly for the benefit of the local authority or neighbouring authority's area).
38. Although the Branch has provided the Company's Articles of Association as evidence that Regulation 5(1)(e) is satisfied, we are not aware of the Branch having provided any evidence whatsoever that the Branch itself satisfies Regulations 4(1)(a) or 4(1)(b). Given the statutory requirement for eligibility evidence in Regulation 6(d) (echoed, as we have pointed out above, by the Council's nomination form and guidance notes) it is clearly insufficient simply to assert, as the Branch has, that these requirements are satisfied.
39. The Branch therefore failed to provide sufficient eligibility evidence to satisfy the "hybrid" approach in any event, even were *St Gabriel* correctly decided or in any way binding upon the Council and the reviewing officer is therefore respectfully invited to reject the Nomination as invalid.

Invalid nomination - the Branch

40. *Were it the case* that the Branch has made the Nomination on its own behalf, then the only reasonable analysis is that it has attempted to do so as some form of unincorporated body
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or association under Regulation 5(1)(c), as none of the other potentially eligible voluntary or community bodies listed in Regulation 5(1) appear relevant and it is not (contrary to the Background Paper) a company limited by guarantee.

41. However, the Branch has provided no evidence (as per Regulation 6(d)) of an identifiable membership (as required to constitute an unincorporated body/association at all), let alone evidence of at least 21 local members (as per Regulation 4(1)(c)) who are registered at an address in the Council's area or that of a neighbouring local authority (as required by Regulation 4(3)). This, again, was despite the Council's clear guidance on the face of the Nomination Form and in its guidance notes.
42. As an unincorporated aggregation of individuals, the Branch has no separate legal personality and the lead nominator does not on the face of it have any authority to bind Branch members with his/her decision to make the Nomination. Without evidence that at least 21 members have supported the Nomination, and further evidence that at least 21 of the supporting members are in fact registered to in the Council's area or that of a neighbouring local authority, the Branch has failed to satisfy the statutory eligibility evidence requirements and the Nomination must be rejected as invalid.
43. Nor has the Branch provided any evidence that any surplus they make is wholly or partly applied for the benefit of Council's area or that of a neighbouring local authority in accordance with Regulation 4(1)(b). Contrary to paragraph 5.2 of the Background Paper, The Company's Articles of Association are not evidence of the Branch's constitution (should it have one) and fail to establish that surplus is applied for the benefit of Council's area or that of a neighbouring local authority in any event.
44. Without evidence of the Branch's constitution or rules, it is impossible to say whether the Branch makes any surplus at all, let alone how any such surplus falls to be applied. The Branch has therefore failed to satisfy the statutory eligibility evidence requirements and the Nomination should have been rejected as invalid.
45. A nomination must include evidence that the nominator is eligible to make the nomination (Regulation 6(d)). A local authority has no discretion to disapply the evidence requirement. Any nomination received from a nominating body that does not satisfy the relevant conditions on the basis of the evidence provided cannot be a community nomination and therefore cannot be successful. The reviewing officer is therefore respectfully invited to reject the Nomination as invalid.

Invalid nomination – bulk nomination

46. The reviewing officer is respectfully reminded that the purpose of Part 5, Chapter 3 of the Act is to provide "*an achievable time frame for community interest groups to organise themselves and to raise finance*", should they wish to bid for land of community value at a time when the owner wishes to enter into a relevant disposal (Hansard, HC Public Bill Committee, 12th Sitting, cols 533 and 534 (February 15, 2011)) (enclosed).
47. The Company has made its intention to nominate/have its branches nominate over 3,000 pubs by the end of 2016 public on its website. It is clear that the Company has no intention

of purchasing any, let alone all, of the properties it is nominating, in the event that their owners make a relevant disposal.

48. Although the reviewing officer may take the view that it is not strictly necessary for a nominator to prove an intention to purchase a nominated asset in order for an ACV nomination to succeed (our client's position on this is entirely reserved), we submit that the clear absence of *any intention whatsoever* to purchase the assets nominated should have count against the Nomination.
49. The Company is attempting to make improper use of the ACV listing process to achieve "blanket" and indiscriminate listing of public houses, without regard for the primary purpose of the legislation. Accordingly, accepting such a nomination would be an improper use of the Council's powers, which are "*designed to ensure that we do not have vexatious, silly or inappropriate nominations included on the register*" (Hansard, HC Public Bill Committee, 12th Sitting, cols 505 and 506 (February 10, 2011), enclosed) and the reviewing officer is therefore respectfully invited to reject the Nomination as invalid.

Invalid nomination - summary

50. In the light of the above it is Greene King's position that the Nomination must be rejected and the Property added to the Council's list of unsuccessful nominations.

Insufficient Evidence that the Property is of any Community Value

51. Without prejudice to the invalidity of the Nomination in the first instance, for the Property to be land of community value the Council must correctly form the opinion that either:
- a. an actual current non-ancillary use of the Property must further the social wellbeing or social interests of the local community and it is realistic to think that this can continue (s.88(1) of the Act); or
 - b. there was a time in the recent past when an actual non-ancillary use of the Property furthered the social wellbeing or interests of the local community and it is realistic to think that there is a time in the next five years that there could be such use (s.88(2) of the Act).
52. Social interests include cultural, recreational and sporting interests (s.88(6) of the Act). "*Social wellbeing*" is not defined in the Act, but it seems that it is the wellbeing of society itself that is important (in the sense of the maintenance and strengthening of bonds between people, the promotion of societal cohesion and unity, etc.) rather than just the wellbeing of a number of individuals within a given society. The Act focuses on local communities, not individuals, or communities which have no connection to the locality of the Property.
53. In the absence of a statutory definition or guidance as to the meaning of "*ancillary*" within s.88(1) of the Act, the term should be given its ordinary and natural meaning within the context of the facts of the matter under consideration. The shorter and little Oxford English Dictionaries define ancillary as meaning "*subservient*", "*subordinate*", "*auxiliary*", "*providing*
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essential or necessary support to the primary activities or operation of an organization or system”.

54. It clearly was not the intention of Parliament in drafting the relevant provisions of the Act and the Regulations that all pubs should satisfy the test set out in s.88 by virtue of being pubs alone. The bar set by s.88 requires more than mere use of a property as a public house (*Patel v London Borough of Hackney and another [2013] UKFTT CR/2013/0005 (GRC)*).
55. Although we acknowledge that social hubs are valuable and necessary, the Company has failed to establish that the Property is such a place, nor that it could reasonably be expected to become one. The relevant statutory provisions do not identify any “classes” or “types” of property that automatically pass the test for community value and the test itself *must* be applied on a case-by-case basis to the facts of each and every individual nomination, without exception.
56. The reasons why the Company considers that the Property is an asset of community value are set out in the Nomination Form. These are the reasons which the Council must have regard to when reaching any decision on the merits of the nomination.
57. Importantly we note that the Company has provided no evidence to support its reasons that the Property furthers the social wellbeing or social interests of the local community. Without more, these reasons should only be treated by the Council as bare assertions and we would invite the Council to draw adverse inferences from the Company’s lack of evidence of community value underlying the bare assertions.
58. Moreover, the Company has included unsubstantiated reasons which are simply no good or remotely appropriate reasons for listing the Property as an ACV, bearing no relevance, as they do, to the criteria laid out in s.88 of the Act.
59. We note that the Company (in describing its reasons for the Nomination) explains: (i) the potential for use of the Property in a way which might satisfy the community value criteria, (ii) how the Property might potentially be used as a social hub, and (iii) why the Property might potentially help bring society together.
60. Whilst this information, as to the potential of the Property, is helpful when considering the benefits of pubs generally, it is not information that the Council should have regard to when assessing the merits of the nomination of the Property as an ACV. These statements do not identify or evidence an actual non-ancillary use of the Property (current or prospective) that furthers the social wellbeing or social interests of the local community.
61. We address each allegation specifically, below.

Use of the Property as a public house

62. The Property is traded as a traditional pub. It is not known as a community pub. Patrons (i.e. the drinkers within it) imbibe alcohol at reasonable prices. The Property is no different to other traditional pubs in the area. In this case, the Company has not provided any
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evidence that the Property furthers the social wellbeing or social interests of the local community in any particular way. We would invite the Council to draw adverse inferences from the Company's lack of evidence of community value underlying this bare assertion. The Council must have regard to the use of the Property itself and consider whether there is sufficient evidence to form an opinion that the pub is more than simply a place where people can imbibe alcohol. In other words, the Council must carefully examine the actual use and character of the Property and assess whether in its opinion these further the social wellbeing or social interests of the local community.

63. The mere fact that the Property is a public house in which people can potentially meet and socialise and build a sense of belonging is insufficient to establish that it is of community value as defined by s.88 of the Act. It clearly cannot have been the intention of Parliament in drafting the relevant provisions of the Act and of the Regulations that all pubs should satisfy the test set out in s.88 by virtue of being pubs alone. The bar set by s.88 requires more than mere use of a property as a public house. Indeed in *Patel v London Borough of Hackney and another* [2013] UKFTT CR/2013/0005 (GRC) at paragraph 4 (enclosed) Judge Warren stated that "for the appellant, Mr Turney, correctly pointed out that not all pubs would come within Section 88(2)(c)" (it is clear that the Judge meant s.88(2)(a) or (b), given that there is no sub-section (c), and also from the wider context in that case.
64. Nevertheless, without prejudice to the irrelevant nature of the allegations set out in the Nomination Form, there are pubs nearby the Property which are clearly active within, and serve, the community and where residents or community groups can meet, if they wish to socialise and imbibe alcohol:
- (a) The Butchers Arms, which is located only 1.3 miles from the Property (an 8 minute drive or 35 minute walk), is described in the Company's What Pub guide, a web print-out of which is enclosed, as:
- "After major refurbishment, the pub reopened on Friday 29th January 2016 as The BUTCHERS ARMS. There has never been a pub of that name in Barnet, but many, many years ago the site was a butchers shop to the front, with an abattoir behind and below; hence the name change. It has now been tastefully improved with modern seating; a total change from its previous look....check out the sparkling West End style loos!!! Long, narrow, former Wetherspoon's 'Moon Under Water'. 1987 conversion but now a Free House offering an ever changing range of four ales; the Landlord is passionate about serving a great pint, which are often sourced from SIBA. It is popular with sport fans as all live football games are shown; they are able to show at least 4 different games in 6 separate areas. Open mic night Sundays and occasional live music on Saturday. May stay open until 1am Friday and Saturday nights, depending on how many are in!"*
- The Butchers Arms: (a) has a pub garden, (b) is family friendly, (c) has traditional pub games including darts, pool, crib, and shut the box; (d) hosts live music, (e) has a smoking area; and (f) offers sports TV.
- (b) The Lord Nelson, which is located 1.6 miles from the Property (a 8 minutes drive) is described in the Company's What Pub guide, a web print-out of which is enclosed, as,

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"Friendly one-bar pub with a lovely sunshine style stained glass front window. Full of bric-a-brac with a fabulous collection of novelty salt and pepper pots. These have been donated by customer returning from holidays; many are used to accompany very good home cooked lunches. They now only serve evening meals by special arrangement. A Wells and Young's pub that will often have a guest ale as well as seasonal offers from their brewery. Very dog-friendly; watch out for fluffy toys on the floor!"

The Lord Nelson: (a) has a pub garden; (b) offers lunchtime meals; (c) hosts traditional pub games; (d) offers newspapers; (e) is dog friendly; and (f) offers sports TV and WiFi.

- (c) The Bohemia, which is located only 2.5 miles from the Property described in the Company's What Pub guide (a web print-out of which is enclosed) as, *"After less than a year closed, The Bohemia reopened on Wednesday 11th June 2014 by the London Brewing Company. The aim was to have 3 of their own beers plus two guests. But they have now set up a micro-brewery (as they have at The Bull in Highgate), so they often concentrate on five of their own beers!! They switch between Highrise (3.9%), Beer Street(4%), Vista(4.7%), Skyline(5.3%) and various seasonal beers, 3 of which are listed below. Large range of craft and bottled beers available. Good food served. No entry after 23.30hrs on Friday and Saturday, even though pub stays open till 1am. Local CAMRA Pub of the Year 2016"*.

The Bohemia's website (<http://www.thebohemia.co.uk/>) sets out that it hosts various events including: (a) *"Salsa Soul Night at the Bohemia"* which involves salsa classes and social dancing every Tuesday; (b) *"Taxing Tuesday"* which is a quiz night every Tuesday evening; (c) *"Wings Wednesday"* which is a special offer on hot spicy chicken wings every Wednesday; and (d) *"Boogie Nights"* every Friday and Saturday.

The Bohemia: (a) has disabled access; (b) offers lunchtime and evening meals; (c) has a pub garden; (c) is dog friendly and family friendly; (e) has a separate bar and smoking area; (f) offers WiFi; (g) has a separate function room; and (h) hosts traditional pub games.

The Bohemia was also listed as an ACV on 16 October 2013.

65. Outside of pubs, there are several other places within proximity to the Property where residents can meet to socialise, participate in activities/ events, and/ or host meetings. By way of example, Friend In Need Community Centre (0.6 miles from the Property) and New Barnet Community Centre (0.2 miles from the Property), both host a variety of activities, clubs, and social groups, covering different interests including health and fitness, arts and crafts, dance and drama etc. They cater for all age groups.
66. The New Barnet Community Centre offers various activities for the local community, and hosts a number of weekly events and clubs, including (but not limited to): Elders luncheon, brownies, toddlers groups, karate, councillors surgery, bipolar group, youth club, and meditation.
67. The Friend In Need Community Centre offers a series of different activities including "Exercise to Music", "Coffee Mornings", "Tuesday Lunch Club", "IT For Beginners",

"Massage Therapy" etc. It also operates a "Good Neighbour Scheme" which provides services such as information and advice, community sport, befriending scheme, a shopping bus, and gardening scheme. It also offers a "Helping Hands" service which provides help in shopping, banking, paying bills, collecting prescriptions, collecting pensions, managing documents etc. Therefore the Friend In Need Community Centre serves the needs of the local community in various ways.

68. Therefore there are countless community pubs and community venues near the Property which are demonstrably assets of community value which substantially further the social wellbeing and social interests of the community, whereas the Property does not. The above examples clearly illustrate that there are other alternative pubs within close proximity to the Property, which serve the community.
69. It is surprising (but perhaps not so surprising in the light of the Company's unfocussed "List your Local" campaign) that the Company has made such broad assertions without actually showing any community value attaching to the Property. It is also surprising that the Company has, in essence, asserted in the Nomination Form that the Property should be listed as an ACV based on the fact that it is a pub; this analysis is incorrect. The bar set by s.88 requires more than mere use of a property as a public house (*Patel v London Borough of Hackney and another [2013] UKFTT CR/2013/0005 (GRC)*).

The statement that "Live music events are often hosted at the pub which brings the whole community together- further people's individual wellbeing. This also provides a platform for local music artists and contributes to the local area's culture"

70. Unfortunately in this case the Company has provided no evidence whatsoever of live music events being hosted at the Property, or of any specific or identifiable value which might be attached to them, were this allegation true. Such evidence, were the statement true as to the factual occurrence of the hosting of these events, would be easy to provide, for example via letters of support or statements from any of the individuals that attended such events at the Property. Although we acknowledge that live music venues are valuable and necessary, the Company has failed to establish that the Property was or is such a place, nor that it could reasonably be expected to continue to be one.
71. The Council needs to assess whether the use of the Property furthers the social wellbeing or social interests of the local community, not whether an environment exists which potentially "*provides a platform for local music artists and contributes to the local area's culture*". It goes without saying that merely because a property has hosted and/ or hosts such events, it does not prima facie make the Property of community value. There must be something more.
72. However in this case the Nomination Form is completely bare and devoid of any explanation of how such events might be for the benefit of the local community as part of the main use of the Property as a public house, as opposed to an odd event in the distant past for the benefit of others outside of the local community on an ancillary basis as part of someone else's business (which is entirely possible: a third party might have been paying a concession to the public house to run live music nights from the Property). Further there is no evidence as to whether or not those who attend such events (if they take place) that use

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the Property are from the local community, or from further afield. Therefore in making a determination on this point the Council would be making an unjustifiable leap of faith.

73. In any event, if this allegation were true, such events would be ancillary to the main use of the Property as a public house, which is the sale of alcoholic and non-alcoholic beverages to the public with or without food. There is no suggestion that the live music nights are part of the public house operation, or indeed that live music events do not occur at other local venues.
74. The test in s.88(1)(a) of the Act refers to the "*actual non-ancillary use of the Property*". In the absence of a statutory definition or guidance as to the meaning of "ancillary" within s.88(1)(b) of the Act, the term should be given its ordinary and natural meaning, within the context of the facts of the matter under consideration. The shorter and little Oxford English Dictionaries define ancillary as meaning "*subservient*", "*subordinate*", "*auxiliary*", "*providing essential or necessary support to the primary activities or operation of an organization or system*".
75. Public house use, the main use of the Property, is the supply or sale of alcoholic and other beverages to the public with or without the provision of hot or cold food. All other uses of the Property which are provided in addition to this use, such as sporting facilities such as darts, pool etc., live music, board games, meeting rooms, and so on, are clearly subordinate to the commercial use of the Property as generating trade from the sale and supply of drinks and food
76. Further, there are a number of other nearby pubs (within a 1.5 mile radius) which provide live music, including: (a) the Weaver's Bar, (b) the Butchers Arms, (c) the Griffin, and (d) the Black Horse.

The statement that the Property "*hosts advertising for local events which encourages the community to come together to support local businesses*"

77. Whilst the provision of advertising is, of course, a useful feature of the Property, it has absolutely no bearing on the test to be considered by the Council, and should be disregarded. These statements do not identify or evidence an actual non-ancillary use of the Property (current or prospective) that furthers the social wellbeing or social interests of the local community.
78. This reason bears no relevance to the criteria laid out in s.88 of the Act. The Council needs to assess whether the use of the Property as a pub furthers the social wellbeing or social interests of the local community, not whether it provides advertising for local events. The Council should draw adverse inferences from the absence of any actual evidence presented.

The statement that "*there is a beer garden attached to the pub which is used and enjoyed by local people including families. This is particularly enjoyed in the summer months and brings different groups of people together to use the pub in furthering the recreational interests of the community*"

79. The allegation that the Property has a beer garden is not a valid reason to support the Company's nomination that the Property should be an asset of community value, and has no relevance whatsoever to the assessment criteria laid out in Section 88 of the Act. Accordingly, this allegation should be disregarded by the Council
80. The beer garden can be used by all patrons of the pub, whether locals or those from further afield. However the fact that the Property has a beer garden no more furthers the social wellbeing or social interests of the local community than having the ability to sit inside the pub.
81. Adopting the Company's analysis, any place which has a garden area is capable of becoming an ACV, and therefore should be an ACV. This plainly cannot be correct. The fact that something exists does not mean it is utilised for the criteria set out in the Act, or at all, and the Company provides no evidence to suggest that the beer garden is used.
82. It simply is no reason, of itself, to list the Property as an ACV, bearing as it does no relevance to the criteria laid out in s.88 of the Act, and should be disregarded by the Council. The fact that patrons of the pub, i.e. drinkers within it, can sit in a beer garden whilst they imbibe alcohol does not further the social wellbeing or interests of the local community.
83. Merely stating that use of the beer garden "*brings different groups of people together to use the pub in furthering the recreational interests of the community*" does not satisfy the definition of "*social interest*" under s.88(6) of the Act, being no satisfactory demonstration of any cultural, recreational, or sporting interest, but rather a statement which begs the question of how the local community's social interests are furthered. The use of the Property as a social hub and mere enjoyment is not sufficient to qualify a Property as an ACV, hence the more nuanced criteria set out in s.88.
84. Furthermore there are a number of pubs in close proximity to the Property (within a 1 mile vicinity) which have pub gardens, including the Railway Bell, the Railway Tavern, the Hadley Hotel, the Weaver's Bar, the Prince of Wales, and the Cock Inn (we enclose web-print outs from the Company's What Pub guide, which evidences that each of these properties have a pub garden). Therefore the Council should draw adverse inferences from the absence of any actual evidence presented.

The statement that "*There are televisions screening sporting events enjoyed by patrons. This allows people in the community to come together to enjoy specific sporting events-providing a safe place to enjoy a drink and a specific sporting event for vulnerable members of society*"

85. The allegation that the Property provides sports TV enjoyed by patrons is not a valid reason to support the Company's nomination that the Property should be an asset of community value, and has no relevance whatsoever to the assessment criteria laid out in Section 88 of the Act. Accordingly, this allegation should be disregarded by the Council. Adopting the Company's analysis, any place with a television screen and/ or sports TV would be capable of becoming an ACV. It plainly cannot be a case that a pub should be regarded as an asset of community value simply because it offers Sports TV. Mere TV viewing enjoyment is not

enough to qualify a Property as an ACV. In addition, we fail to understand the correlation between the Property screening sporting events and how this assists vulnerable members of society.

86. In any event, there are a number of pubs, within a 1.5 mile radius of the Property, which offer Sports TV. For example, (a) the Railway Tavern, (b) the Weaver's Bar, (c) the Prince of Wales, (d) the Red Lion, (e) the Butchers Arms, and (f) the Griffin all show sports TV. We enclose web-print outs from the Company's What Pub guide, which evidences that each of these pubs offer sports TV.

The statement that the Property "has a great food menu enjoyed by the local community"

87. Whilst this is, of course, a beneficial feature of the Property it has absolutely no bearing on the test to be considered by the Council, and should be disregarded by the Council. This is part of the main use of the Property and bears no relevance to the criteria laid out in s.88 of the Act. There is no demonstration within the statement made by the Company that the community value criteria are even approaching being met. The Council needs to assess whether the use of the Property as a pub furthers the social wellbeing or social interests of the local community, not whether it is an effective commercial enterprise which sells food to further the business interests of Greene King.

The statement that "free wifi is available for customers which allows people to access the internet who otherwise would not be able to. The pub therefore provides a vital facility for people wanting to use the pub for more than just a social event"

88. This reason bears no relevance to the criteria laid out in s.88 of the Act. The Council needs to assess whether the use of the Property as a pub furthers the social wellbeing or social interests of the local community, not whether an environment exists in which people can access the internet. The provision and/ or availability of WiFi at the Property is entirely irrelevant, and in any event entirely ancillary to the use of the Property as a pub.
89. In any event, there is no actual evidence presented of WiFi being hosted at the Property. It is not enough for a person to make a nomination, saying things, without any supporting information. The Council should draw adverse inferences from the absence of any actual evidence presented.
90. Further, there are a number of nearby pubs which offer WiFi (within a 2.5 mile radius of the Property). For example, the Red Lion, the Black Horse, the Lord Nelson, the Orange Tree, the Oakwood Tavern, the Duke of York, and the New Crown (and many more) all offer WiFi. We enclose web-print outs from CAMRA's What Pub guide, which evidences that each of these pubs offers WiFi.

The statement that "There are good transport links available to/ from the pub. This means that elderly members of the community can easily and safely get to/ from the pub. It also means that people from surrounding areas can easily access and enjoy the pubs facilities"

91. This reason, of course, bears no relevance to the criteria laid out in s.88 of the Act. The Council needs to assess whether the use of the Property as a pub furthers the social
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wellbeing or social interests of the local community. The Property's car parking facilities, location and proximity to transport links has no particular bearing on the test to be considered by the Council, and should be disregarded by the Council.

The statement that the Property "has been included in a tourist or local pub guide, which attracts more people to the pub from surrounding areas and communities which helps boost the local economy. It also puts the pub on the map as a pub worthy of recognition by the Council"

92. Whilst this is, of course, a commendable feature of the Property, it has absolutely no bearing on the test to be considered by the Council, and should be disregarded by the Council. The inclusion of the Property in a tourist or local pub guide is not a use which of itself satisfies the community value criteria contained in the Act.

The statement that the Property "has two separate bars, one a public bar with games facilities and one a quieter bar available for community groups, clubs and societies to use as a meeting place. In particular there is a local Cribbage club that meets in the pub on a weekly basis"

Games facilities

93. The Company states in the Nomination Form that the Property offers a dart board, pool tables, and board games. There is no actual evidence, provided by the Company, of traditional pub games being present or indeed used/ played at the Property. The Council should draw adverse inferences from the absence of any actual evidence presented. Even if the games facilities do exist, which has not been shown to the Council, the fact that something exists does not mean it is utilised either regularly or at all for the criteria set out in the Act, and in this case the Company provides no evidence to suggest that the traditional pub games exist, or are regularly used (or at all).
94. In any event even if they are used, it is no reason, of itself, to list the Property as an ACV, bearing as it does no relevance to the main use of the Property as a public house, and the bare assertion should be disregarded by the Council. The provision of these facilities is plainly ancillary to the use of the Property as a pub. The fact that patrons of the pub, i.e. drinkers within it, can play games whilst they imbibe alcohol does not further the social wellbeing or interests of the local community.
95. The test in s.88(1)(b) of the Act refers to the "actual non-ancillary use of the Property". In the absence of a statutory definition or guidance as to the meaning of "ancillary" within s.88(1)(b) of the Act, the term should be given its ordinary and natural meaning, within the context of the facts of the matter under consideration. The shorter and little Oxford English Dictionaries define ancillary as meaning "subservient", "subordinate", "auxiliary", "providing essential or necessary support to the primary activities or operation of an organization or system".
96. Public house use, the main use of the Property, is the supply or sale of alcoholic and other beverages to the public with or without the provision of hot or cold food. All other uses of the Property which are provided in addition to this use, such as sporting facilities such as

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darts, pool tables etc., live music, board games, meeting rooms, and so on, are clearly subordinate to the commercial use of the Property as generating trade from the sale and supply of drinks and food.

97. Further and in any event the Company's What Pub guide evidences that other nearby pubs house (within a 1.5 mile radius) traditional pub games. Examples are the Butchers Arms and the Lord Nelson. We enclose web-print outs which evidences that each of these pubs house traditional pub games.

Meeting place

98. The Company asserts that the Property has a "*quieter bar available for community groups, clubs and societies to use as a meeting place*". In particular, the Company mentions a local Cribbage club which allegedly uses the Property on a weekly basis.
99. It is not clear on the face of the Nomination whether the meetings that allegedly take/ took place at the Property are organised gatherings of the Cribbage club (or indeed any other clubs that may use the Property) for the purposes of discussing some business or issue relevant to their group or whether the Company is simply stating that such groups of people occasionally frequent the Property as a pub. In the absence of evidence of any organised gatherings our client's submission is that the latter interpretation is correct. The Council is respectfully reminded that pub use alone is not sufficient to satisfy the criteria under s.88 of the Act.
100. To be clear, the Company has provided no evidence whatsoever to support the allegation that any local interest/ community groups, including the Cribbage club, meet at the Property. The Company has not provided evidence of any club meetings actually taking place at the Property and/ or their frequency. It is our client's respectful submissions that had organised community group meetings occurred at the Property then this evidence would have been easy to provide. This generalised and unhelpful statement should therefore carry no weight with the Council. To the contrary, the Council should draw adverse inferences from the absence of any actual evidence of club meetings presented.
101. Further, even if the Property is/ has been used as a venue by community groups to hold meetings, such use is/ was ancillary to the use of the Property as a public house. Public house use, the main use of the Property, is the supply or sale of alcoholic and other beverages to the public with or without the provision of hot or cold food. Use of the Property as a Club meeting place is clearly subordinate to the commercial use of the Property as generating trade from the sale and supply of drinks and food. Such additional activities, if they occur, are not an integral part of the main public house use at all.
102. Further still, even if spaces in the Property are used by groups to hold informal meetings, this is irrelevant unless the Company has established that such use is either current in the relevant way and it is realistic to think that this can continue (s.88(1)), or that the Property had been used in the relevant way in the recent past and that there is a realistic possibility of the Property being used in this way within the next 5 years (s.88(2)). The Company has satisfied neither limb of the community value criteria.

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103. Nor is the Property the only informal meeting place in the area. The Council is referred to our comments at paragraphs 64 – 68 above in respect of alternative public houses and other venues in the vicinity. The existence of these alternative public houses and community halls/ centres for similar ancillary use means that even if the community value criteria were engaged (which it is not), the community value attributable to such use would be dissipated as a consequence of the availability and use of such alternative venues.
104. Without any evidence, this is no more than a bare assertion against which the Council should draw adverse inference for want of detail or evidence in support. There is not even a hint of a suggestion that community groups meet at the Property otherwise than as part and parcel of the main use of the Property for the sale of alcoholic and non-alcoholic drinks with or without food.
105. In any event, even if this allegation were true, occasional (and infrequent) use of the Property as a meeting place for clubs would in any event be:
- i. subordinate to the commercial use of the Property as generating trade from the sale and supply of drinks and food.
 - ii. *de minimis*, in the sense that it is an insignificant use in any event.
- b. Such marginal additional activities would not be an integral part of the main public house use at all and would be ancillary to the main public house use of the Property, and therefore irrelevant for the purposes of s.88 of the Act.
106. The hosting of such meetings is ancillary to the use of the Property as a pub. The test in s.88(1)(a) of the Act refers to the “*actual current non-ancillary use of the Property*”. In the absence of a statutory definition or guidance as to the meaning of “ancillary” within s.88(1)(a) of the Act, the term should be given its ordinary and natural meaning, within the context of the facts of the matter under consideration. The shorter and little Oxford English Dictionaries define ancillary as meaning “*subservient*”, “*subordinate*”, “*auxiliary*”, “*providing essential or necessary support to the primary activities or operation of an organization or system*”.
107. Accordingly, the unsupported allegation that the Property is occasionally used as a space for meetings or the like, should not form part of the Council’s analysis as to whether the Property furthers the social wellbeing or social interests of the local community. Without more, this reason should only be treated by the Council as a bare assertion and we would invite the Council to draw adverse inferences from the Company’s lack of evidence underlying this bare assertion.

The statement that “A quiz night open to the whole community also features on Wednesdays”

108. The fact that patrons of the pub, i.e. drinkers within it, can potentially participate in a quiz whilst they imbibe alcohol does not further the social wellbeing or interests of the local community. Accordingly this reason bears no obvious relevance to the criteria laid out in s.88 of the Act and should be disregarded by the Council. It plainly cannot be the case that

a pub should be regarded as an asset of community value simply because it hosts quiz nights.

109. In any event, the occasional use of the Property for the purposes of hosting a quiz night is clearly ancillary to the commercial use of the Property as generating trade from the sale and supply of drinks and food. Such an additional activity is not an integral part of the main public house use at all. Alternatively such a use is *de minimis*, in the sense that it is insignificant in establishing community use of the Property to any degree which ought properly be said to satisfy the community value criteria under s.88. For s.88 to be satisfied, a Council must be satisfied that a particular use does encourage societal cohesion amongst the local community in some tangible way, rather than guessing that something special happens at the Property as a consequence of some sort of semi-regular event.
110. Further, the Company has provided no evidence to substantiate this allegation. This bare assertion should therefore carry no weight with the Council. The Company has simply stated that quiz nights take place “on Wednesdays”. However the Company has not provided evidence of any quiz nights actually taking place at the Property, their frequency, or that it brings people together.
111. Given that that such activities are prima facie ancillary to the main use of a public house, evidence of frequent and intense use would certainly be necessary to establish that such use falls to be considered under the s.88 criteria.

The statement that the Property “is also available as a venue for community events such as wedding receptions and birthday and anniversary parties. In this way it serves as a meeting place for people of all ages, interests and backgrounds to meet, make new friends and interact”

112. This unparticularised and bare allegation fails to engage the s.88 criteria in that the mere fact that the Property might be used by local people as a venue for community events and to meet and socialise is not sufficient to establish that the Property actually furthers the social wellbeing or social interests of the local community in the sense intended under the Act. Use of the Property for the purposes of community cohesion and a collective sense of well-being does not satisfy the definition of “social interest” under s.88(6) of the Act, being neither a cultural, recreational, nor sporting interest. Further the use of the Property as a social hub and mere enjoyment is not sufficient to qualify a Property as an ACV, hence the criteria set out in s.88. In any event there is no demonstration within this short and unevicenced statement that the community value criteria are even approaching being met. It is not enough to make a short statement of this nature which begs the question.

The statement that the Property “provides other important local services to the community including: Access to free local newspapers [and] Employment opportunities for young people”

113. This reason bears no relevance to the criteria laid out in s.88 of the Act. The Council needs to assess whether the use of the Property as a pub furthers the social wellbeing or social interests of the local community, not whether an environment exists in which people can keep up to date with current affairs. The provision and/ or availability of newspapers at the

Property is entirely irrelevant. Society can keep abreast of news and current affairs by watching television, purchasing newspapers, via the internet and/ or obtaining a copy of a free newspaper such as the Metro.

114. In any event, there is no actual evidence presented of newspapers being hosted at the Property. It is not enough for the Company to make a nomination, saying things, without any supporting information. The Council should draw adverse inferences from the absence of any actual evidence presented.
115. Further the allegation that the Property provides work/ employment opportunities for young people is not a valid reason to support the Nomination that the Property furthers the social wellbeing and interests of the local community, and therefore should be listed as an ACV. The Company has provided no evidence of this, nor would the provision of employment for young people, if it was shown to be the case, be a matter capable of demonstrating that the community value criteria contained in the Act is met. Such a matter would be an economic benefit, not a social one for the local community.
116. Adopting the Company's analysis, any business place where jobs are offered to young people would be capable of becoming an ACV. It plainly cannot be a case that a work place should be regarded as an asset of community value simply because it offers the prospect of employment. Employment prospects are not a relevant factor.
117. Without more, this reason should only be treated by the Council as a bare assertion and we would invite the Council to draw adverse inferences from the Company's lack of evidence.
118. The Council must have regard to the Property itself and consider whether the pub is more than simply a place where people can imbibe alcohol. In other words, the Council must carefully examine the actual use and character of the Property and assess whether in its opinion these further the social wellbeing or social interests of the local community. Absent any evidence in support of these allegations, they are no more than bare assertions and the Council should give no weight to them.

Insufficient evidence that the Property is of any Community Value – Summary

119. The Company's case for listing the Property, once all false, bare and empty allegations are ignored, is in essence that this Property should be listed as an ACV because it is a pub, and because it says so.
 120. However, if the legislature had intended all use of properties as pubs to be in furtherance of the social wellbeing and interests of the local community and to be a valid and mandatory reason for listing a substantial property, such as the Property, as an ACV, then it would not have given local authorities discretion under s.88(1) and (2) of the Act to list as ACVs only those assets which are the subject of a nomination which shows that the property in question is of actual measurable value to the local community.
 121. That the Company, from a subjective viewpoint, seems to think that the Property is of community value is simply no good or remotely an appropriate reason for listing the
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Property as an ACV, bearing no relevance, as it does, to the criteria laid out in s.88 of the Act, and it should be disregarded by the Council accordingly.

122. The ACV listing mechanism exists to allow the local community to purchase a property which is considered to be an Asset of Community Value. Whilst the Company makes broad-brush allegations about the Property, the Company has not indicated at any stage that it wishes to purchase the Property or shown any understanding as to the costs, finance, turnover and profit margins required to run the Property as a pub. Therefore the Company's uncorroborated allegations should be given no weight by the Council. Without any intention to bid for the Property, the Nomination is pre-emptive. There is a complete absence of evidence of community value.
123. The Council must have regard to the reality of the position as it exists and it cannot adopt unrealistic and speculative beliefs formed by an uncertain Company as to the future use of the Property without any foundation for doing so. In summary, there is no evidence furnished by the Company to support an assertion that the Property, or any part of it, is of community value. Moreover there are genuine and actual/ demonstrable assets of community value within close proximity to the Property, which patently serve the community and further social well being and social interests, whereas the Property does not.

Conclusion

In conclusion, our client objects to the Property being listed as an ACV, the principle basis being that the Nomination is not a valid community nomination, having not been made by a qualifying body in accordance with the Act at all, and being as it is completely devoid of any "*evidence that the nominator is eligible to make a community nomination*" (as required by regulation 6(d) of the Regulations), as to its requisite local connection.

Further still and in the alternative, the Nomination makes a number of demonstrably bare assertions which are presented as reasons to list the Property as an ACV. All point either to ancillary uses or to uses that fail to promote the social wellbeing or interests of the local community and none of the allegations has been accompanied by any evidence. The Council must draw adverse inferences from the lack of supporting evidence provided in support of these assertions.

The Nomination fails to disclose any credible evidence that the Property furthers or furthered the social wellbeing or social interests of the community, whereas there is clear evidence of other nearby facilities, which substantially further the social wellbeing and social interests of the community and will continue to do so. The fact that a given property is a public house is not sufficient to satisfy the criteria for listing under s.88 of the Act. In order to be listed as an ACV, a local authority must be satisfied, on the basis of the relevant nomination form and evidence provided, that there are sufficient reasons to conclude that the Property is of community value as defined by s.88 of the Act.

Failure to assess the relevance and credibility of a nomination in light of the evidence provided, or the lack thereof as in this case, defeats the central purpose of the Act, which seeks to allow communities the opportunity to protect land that furthers the social wellbeing or social interests of the local community. If local authorities fail to ensure that successful nominations are based on

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actual and credible evidence, then there is a significant risk that ACV nominations will be reduced to a mechanism for the opportunistic infringement of property rights, as in this case.

It is therefore Greene King's contention that no reasonable authority, addressing its mind to the correct matters to be considered and limiting itself to the absence of evidence provided, could possibly conclude that the Property is an ACV. Should the Council conclude otherwise, then we shall advise our client to not only consider challenging such a decision, but to also consider claiming for all its losses, including diminution in value of the Property as a consequence of listing the Property as an ACV.

Our client sincerely hopes that this will not be necessary, and that the Council will respect its private property rights, and reject this abusive and unrealistic nomination.

Yours faithfully

A black rectangular redaction box covering the signature of the sender.

Freeths LLP

Encs.