

Community Right to Bid

Greensquare: Land Between Briarfield Avenue and Rosemary Avenue N3 2LG

Comments and response

This second nomination following the removal of the land from the Council's list of assets of community value ("ACV") is opposed. The ACV regime has been complied with by the owner and it is now not an ACV.

During the five year period the opportunity to acquire that part of the land edged and numbered 2 on the attached plan ("the Bowls Club Land") for community use has been given by the owner (as described in the attached marketing report by Mr. J. Leaf BSc FRICS FNAEA FARLA) but not taken up. Rather the bowling club, which was a major factor in the original ACV listing, has vacated the Bowls Club Land pursuant to a consent order in the proceedings in which the club originally sought a renewal of the lease in its favour. Since then the former clubhouse has remained vacant and boarded up.

The opposition to this nomination is based on two separate grounds. The first is that the site is not being used for purposes which further the social wellbeing or social interests of the local community. The area previously leased to the bowling club is boarded up and unused. The bowling club voluntarily vacated the Bowls Club Land in July 2017 pursuant to the consent order.

The remainder of the site has not been used in a manner which can qualify as use for the purposes of the ACV regime. This is not a case in which locals have entered on unfenced land without dissent from the owner. Although technically a trespass that does not necessarily (on the basis of current authorities) prevent the use resulting from such entry being use for the purposes of the ACV regime. With the part not comprising the Bowls Club Land however, those on the land have only achieved entry by breaking down the fencing and blatantly ignoring the owner's direction not to come on to the land or taking advantage of such breakages.

There is a crucial difference between the two types of entry on to land described. Trespass which is the result of action damaging property and known to be directly contrary to the owner's directions cannot constitute use which causes an asset to qualify as an ACV.

Further it must be borne in mind that in rejecting the application to register the land as a village green the inspector held that the use up to 2007 had not been significant and was overstated by the applicant's witnesses (paragraph 149 of the decision).

The second ground of opposition is that it is not realistic to think that there will be a use which furthers the social wellbeing or social interest of the local community. It is not just that the bowling club has vacated the Bowls Club Land and the former club house been boarded up. The owner has placed the Bowls Club Land on the market and sought offers by way of lease. This is explained in the marketing report attached. The former bowling clubhouse is in a poor state of repair. The greens are overgrown. There is no interest in acquiring or leasing this property. No one wishes to take on the burden of repair and maintenance. The history set out in the Inspector's report with regard to the village green application illustrates how such burden resulted in the cessation long ago of historic activities such as allotments and tennis.

There has been no significant response to the marketing and no offer at all made. There is no desire by anyone, let alone a community group to take on responsibilities with regard to any part of this land. This point was considered in *Fernwick Limited v Mid Suffolk* DC CR/2015/0024 by Judge Simon Bird QC who stated at paragraph 27:

"Whilst there is community support for retention of the Cross Keys as a pub, that has to be seen in context. The support is for the continued protection of the use rather than any clear support in the form of willingness to take on the Cross Keys and to attempt to run it as a going concern. On the evidence, the Parish Council's priority is, understandably, the Village Hall. It has no apparent interest in acquiring or assisting in the running of another licensed premises to serve the Parish. Likewise, the Second Respondent as nominator for inclusion in the ACLV, acted to protect and not to involve itself in the acquisition and/or operation of this pub."

This led the judge to conclude at paragraph 29:

"that it is not realistic to think that the building could be used for any other use that would further the social well-being or social interests of the local community. Whilst the building might be of a form and/or design which might be suitable for such a use, there is no evidence that there are any realistic proposals for such uses or that there is any prospect of

such proposals emerging in the next five years. Whilst there is no requirement that there be business plans or similar to support suggested uses which might be made of buildings, there must be more than mere speculation to support a finding that it is realistic to think that they could materialise in the next five years in a building located some distance from the settlement(s) it would principally serve. There is no such evidence in this case.”

The circumstances surrounding the area of the land previously leased to the bowling club is akin to the bowling green in *Hickinbottom v Telford & Wrekin DC* CR/2017/0017 which was held by Judge Simon Bird QC not to qualify as an ACV. At paragraph 179 he stated that:

“The Bowling Green is now disused and overgrown. Whilst the costs of restoration lack robustness for the same reasons as the other cost estimates, there has been no suggestion that the costs of restoring the Bowling Green to a playable surface for bowls would be anything other than substantial. There is also no evidence before me that there is any prospect of the former members of the Bowls Club or anyone else being either able or willing to incur the likely expenditure for the required restoration.”

In doing so the judge applied the dicta of Judge Peter Lane said in *Evenden Estates v Brighton and Hove City Council* CR/2015/0015 that:

“it should not be assumed that the requirement of section 88(2)(b) will necessarily be met, merely by a Micawber-like hope that something will turn up. A fact-sensitive analysis is called for”.

Such a fact-sensitive approach in this case shows that the former bowling club house is in a poor state of repair; the greens are not being maintained; the remainder of the land is overgrown; no offer to buy or lease has been received; no sources of funding has been obtained for a community purchase; no acquisition plans have been provided in support of the nomination. As in the *Fernwick* case the nominators desire to retain the use, but not to take responsibility, which is insufficient to satisfy the second condition and so the land does not qualify as an ACV.