

9 March 2016

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By e-mail

Dear x

**The Alliance, 40-42 Mill Lane, West Hampstead, London NW6 1NR**

I'm writing to inform you that in response to the nomination of the Alliance public house as an asset of community value (ACV), the Council has decided to list the ground and lower ground floors of the pub as an ACV, for the reasons set out below.

**Eligibility of nominator**

In order for a property to be listed as an ACV, it must be nominated by an eligible body. The Alliance was nominated by the Fortune Green and West Hampstead Neighbourhood Development Forum which, as a neighbourhood forum in Camden designated by the local authority, is eligible to nominate an asset of community value under Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012.

**Evidence of community value**

The Council must determine whether the pub meets the definition of community value set out in section 88 of the Localism Act 2011, namely whether in its opinion:

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 it is realistic to think that this can continue.

The Act further defines social interests to include in particular cultural interests, recreational interests and sporting interests.

In coming to its decision, the Council has drawn on the following sources of information:

- The nomination form
- Additional information provided by the nominator including the results of an online survey
- Representations from Green King plc, the freehold owner of the pub
- Testimonials from two ward councillors

- The pub's website and online reviews

The Council recognises that a pub is not intrinsically an ACV and each nomination must be considered on its own merits. In the case of the Alliance, there is evidence of a number of activities that in the Council's view further social wellbeing and social interests of the local community:

- Regular meetings of a number of book clubs
- Regular meetings of residents', community, church and political groups
- School PTA meetings
- NCT group meetings
- Regular pub quizzes and music nights
- Mother and baby meetings
- Sports teams social events

Each of these activities are small scale and relatively informal, but they have a specific social purpose related to the local community and are in many cases regular meetings. In the Council's view, this is where pubs can provide community value – they fill the gap between formal clubs and associations that might meet in a venue such as a community centre or church hall, and the informal socialising associated with drinking and eating that one would find in any pub. Taken together, the above activities represent a wide range of uses that further the social wellbeing and social interests of the local community.

The owners in their representations make a number of objections to the evidence in support of the nomination. The Council has considered these carefully as follows:

- The Council acknowledges that planning and conservation considerations are largely irrelevant to this decision and has disregarded them in coming to its decision. It also recognises that the survey contains questions which are not relevant to the decision at hand, but these do not in any way count against the pub having community value, as the owners appear to suggest.
- In the Council's view, the activities which further social wellbeing and social interests which take place in the pub are not an ancillary use as the term is used in the Localism Act. This is because, among other reasons, the legislation was clearly intended to allow the listing of pubs and if this were true then no pub would qualify as an ACV as all activity which was not the consumption of food and drink would be an ancillary use<sup>1</sup>.
- The presence or otherwise of alternative venues and their distance from the Alliance are not relevant to the decision at hand. The Council has been asked to decide whether the activities taking place at this particular pub have community value, not how they compare to activities in other places or whether they could take place elsewhere.
- The owners contend that the survey respondents are self-selecting and do not represent a large enough sample of the local population. This may be true but is not relevant to the decision. The survey respondents are self-evidently not a majority of the local population but neither is it claimed that they constitute the entire clientele of the pub. The purpose of the survey, which as acknowledged

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<sup>1</sup> For example, the Ministerial Foreword to the *Community Right to Bid: Non-statutory advice note for local authorities* makes it quite clear that pubs are in scope of the legislation.

above contains some irrelevant information, is solely to determine whether there are enough activities taking place there for the Council to reasonably conclude that the pub furthers the social wellbeing and social interests of the local community. In the council's view, the quantity of respondents (over 700) and the activities mentioned (set out above) are sufficient to allow this conclusion to be drawn.

The second part of the community value test in the legislation requires the Council to decide whether "it is realistic to think" that the pub will continue to have community value. In the Council's view, this is indeed the case – there is little indication in the owner's representations or elsewhere that the pub is at imminent risk of closure or that the activities of community value could cease. Even if this were the case, the legislation allows that other activities of community value could take place in the property in future.

### **Extent of the listing**

The extent of the listing was not explicitly addressed in the nomination. The Council has carefully considered this issue because in other ACV cases it has been of some importance.

The first and second floors of the pub are residential accommodation, currently occupied by the pub manager and staff. Residential accommodation cannot normally be listed except where it forms part of an ACV (see Schedule 1 of the Assets of Community Value (England) Regulations 2012).

The question is therefore whether the first and second floors are part of the pub. The first and second floors have a separate planning use class (C3 residential) to the pub<sup>2</sup>, which has not been the case in other ACV listing decisions the Council has made. Furthermore, the upper floors have their own entrance and there is evidence that they meet the definition of a House of Multiple Occupation under s77 of the Housing Act 2004<sup>3</sup>. HMOs are explicitly excluded from listing under Schedule 1 of the Regulations.

Therefore the extent of the ACV listing is limited to the ground and lower ground floors of the property.

### **Implications of the listing**

The ground and lower ground floors of the Alliance will be added to the list of assets of community value on the Council's website at [www.camden.gov.uk/localism](http://www.camden.gov.uk/localism) and will stay on the list for five years. In addition the Council will also place this asset on the local land charges register and will apply for a restriction on the Land Register.

If the owner intends to sell the freehold of the pub or a lease of 25 years or more, they must first consider whether the sale meets the definition of a "relevant disposal" in the Localism Act and the Assets of Community Value Regulations. For example, a relevant

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<sup>2</sup> See the Council's determination of planning application 2012/4198/P at <http://camdocs.camden.gov.uk/webdrawer/webdrawer.dll/webdrawer/rec/3023081/view/Officer%20Delegated%20Report.PDF>

<sup>3</sup> See the Fire Risk Assessment submitted as part of planning application 2012/4198/P at <http://camdocs.camden.gov.uk/webdrawer/webdrawer.dll/webdrawer/rec/3043035/view/Design%20and%20Access%20Statement.PDF>.

disposal must be with vacant possession. If this is the case, they must inform the Council in writing of their intent to dispose of the Alliance.

If within 6 weeks of its receipt of this notification of intent to sell, the Council receives a written request to be treated as a potential bidder from a "community interest group" (as defined in the legislation), then a full moratorium comes into effect, a period of six months from the original notification of the intent to sell. If the Council does not receive a written request from a potential bidder, then the asset is no longer subject to restrictions on its sale.

Please note that the nominator of the Alliance, the Fortune Green and West Hampstead Neighbourhood Development Forum, does not meet the definition of a community interest group so could not trigger the full moratorium.

The purpose of the six month moratorium is to allow the community interest group time to raise funds to purchase the asset at market value. Please note that the legislation does not prevent the owner from selling the asset to whoever they choose at the end of the six month moratorium period.

If the pub is already on the market and a relevant disposal is intended, then the owner should notify the local authority immediately and the six week initial moratorium period will begin from the date of this notification.

The Alliance has an A4 drinking establishment use class and therefore its listing has an additional implication under the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015. This Order forbids the demolition of ACV listed pubs and requires planning permission for their change of use.

The owner has the right to request a review of this decision within eight weeks of the date of the decision, namely 4<sup>th</sup> May 2016.

Please do not hesitate to contact me if you have any queries about the listing.

Yours sincerely

Michael Webb