

Saving an asset of community value

Tessa Blunden and Romola Parish tell the story so far of the role played by the Localism Act 2011 in the efforts of a group of Nunhead residents to save a much-loved local pub, The Ivy House



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The Ivy House sits at the top of Peckham Rye Park. It has a beautiful 1930s interior, complete with original Truman's branding and a 1930s music hall stage, which has hosted stars such as Elvis Costello and Ian Dury. It has a rich musical heritage and provided a much-needed space to meet and socialise (see the photos on p9). In Spring 2012 the news broke that the pub's owner, Enterprise Inns, had given the popular management team a mere five days' notice to quit the premises. Local residents mobilised immediately to save The Ivy House as a pub.

The campaign met with resounding early success: the Facebook group 'savetheivyhouse' gained 1000 members in a little over 24 hours, and a concerted lobbying effort from local residents and their Labour councillors resulted in the intervention of their MP, Harriet Harman, and a fast-tracked decision by English Heritage to grant Grade II listed status to the historic pub interior.

In the few days before the Ivy House closed, a steering group was formed to investigate the feasibility of a community bid to buy the building. They faced the challenge of transforming themselves into an organisation that could make a serious bid to buy the freehold from Enterprise Inns. They investigated the

advantages and disadvantages of various corporate structures and decided to form a private limited company, intending to raise the purchase price from a mixture of secured commercial lending and private investment.

The situation changed suddenly when in September 2012 Enterprise Inns sold the Ivy House to a North London property developer. Chapter 3 of Part 5 of the Localism Act 2011 had just come into force. The Act helped the residents' campaign (and could help other communities in a similar position) in the following ways:

- Listing The Ivy House as an asset of community value (ACV): with assistance from the Peckham Society, in October 2012 the residents successfully applied to Southwark Council to have The Ivy House listed as one of London's first ACVs, just in time to prevent its sale at auction by the property developer. As the group had formed a private limited company, they were not able to nominate the building as an ACV themselves (see box on p10), so the application was submitted in the name of the Peckham Society. After the listing, they converted from a private limited company to a community interest company for the purposes of

notifying Southwark Council pursuant to s98 of the Act that they intended to submit a bid.

- It bought time: one objective of the Act is to allow communities time to put together a bid to buy an asset. Once Southwark Council granted The Ivy House ACV status, a moratorium of six weeks came into force, during which time the pub could not be sold. During this initial moratorium the residents notified Southwark Council of their intention to prepare a bid to buy the pub, triggering a further six month moratorium to give them time to put their bid together.
- The Act also adds an additional layer of protection to a building whether or not listed by English Heritage. Where land is included in a local authority's list of ACVs, it remains on that list for five years, whether the community bids for it or not. The fact that it is on the list will be treated as a 'material consideration' for planning purposes, and should be taken into account by the council in deciding a planning application (including for change of use) or an appeal against a planning decision.

Once the community group had secured ACV status for Ivy

House, they were referred to Locality, a network for community-led organisations, which directed them to a number of organisations to help provide finance, business development advice or other support. These organisations included the Plunkett Foundation, the Architectural Heritage Fund (AHF), Co-operative and Community Finance, the Social

building back into use and establishing a trading history for the building, so as to enable the owner of the building to refinance in a couple of years' time. In January 2013 the residents successfully applied for grant finance from SIB, which was administering a fund on behalf of the Department for Communities and Local

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Investment Business Group (SIB), Charity Bank, Unity Trust Bank and Tridos. They also received business development advice from the Plunkett Foundation, which assisted them in preparing funding applications.

In December 2012 the residents successfully applied to the AHF for secured loan finance to buy the freehold. The AHF provides short-term finance in relation to at-risk buildings or buildings that are otherwise considered to be vulnerable. This is done with a view to getting the

Government (DCLG) that was open to community groups seeking to purchase ACVs pursuant to the Localism Act.

In February 2013, while still within the statutory moratorium, the community group submitted an offer to the vendor to purchase The Ivy House, and this offer was accepted. The residents had sufficient funds for the purchase and to pay the associated costs, for example stamp duty and legal fees, and are due to complete very soon. However, they now require investment from the community to enable them to get the pub

The Ivy House in pictures



ready to trade again. They have converted to a community benefit society (a type of industrial and provident society) to enable them to issue withdrawable share capital, which will enable members of the community to invest in the pub. They are about

to launch a community share issue with a target of £100,000. This will provide working capital and will also enable members of the surrounding community to help shape the character and development of their neighbourhood. The

residents hope that the community share issue will promote loyalty and a sense of ownership of this landmark building, and encourage local residents to use the venue themselves and also promote it more widely. ■

Assets of Community Value and the Localism Act 2011

The Localism Act 2011 has introduced a raft of community rights and powers into the planning landscape, with the objective of giving local communities greater control over development in their area. Here we look at the implications of the community right to bid and at assets of community value (ACVs).

1. Assets of community value

The provisions governing the listing of ACVs came into force on 21 September 2012, followed shortly after by guidance for local authorities from DCLG at: <https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>. In summary, community groups may nominate assets to be listed as ACVs if either:

- (i) they are used primarily for a community's social well-being or social interests and it is realistic to think that such use would continue for the next five years; or
- (ii) there was a time in the recent past when an aspect of the use of the land or building furthered the social well-being of the community, and it is realistic to think that there is a time in the next five years when there could be such a use again.

An ACV may include open land, buildings, and/or parts of buildings and thus could include informal and formal playing fields, allotments and other open space and buildings used as pubs, local shops, nurseries and community gatherings. The meaning of the phrases 'community's well-being' and 'social interests' is left to individual local authorities to define, and may differ from council to council according to circumstances. It is irrelevant who owns the ACV; it is the primary use as a community function that is key.

2. Assets that will not get listed

Certain properties are exempt from listing. An ACV must be used primarily for community uses, so any property such as a school that hires out a hall or a sports facility for occasional, even if regular, community use would not be caught, as its primary use is as a school. If a property is part-used as a residence, it cannot be listed unless the residential element is ancillary to the main community uses – for example a pub with rooms above can be listed, but a barn in the grounds of, and in the same ownership as, a private residential property would not be listed. Listing nominations can be contested by the owner of the potential ACV, who is entitled to an internal review of the decision. If the local authority disagrees with the nomination, the asset is placed on a separate list from which it can be removed if appropriate.

3. Community Interest Groups

The Act provides that only a request to be treated as a bidder received from a 'community interest group' is to be passed on to the owner. Under the ACV Regulations 2012, a community interest group is a body with a local connection with the land which is:

- (i) a charity;
- (ii) a company limited by guarantee which does not distribute any surplus to its members;
- (iii) an industrial and provident society that does not distribute any surplus to its members, is registered or deemed to be registered under the Industrial and Provident Societies Act 1965 and which meets one of the conditions in s1 of that Act; or
- (iv) a community interest company established pursuant to the Companies (Audit, Investigations and Community Enterprise) Act 2004, which is a limited liability company designed for social enterprises.

4. The right to bid/moratoria

The key implications of listing are:

- (i) the moratorium on sale; and
- (ii) the requirement that the owner notify the council of any intention to sell.

There is an initial six-week moratorium during which a community group can give notice of its interest in bidding for the ACV. If it does so, then a second six-month moratorium comes into effect during which the seller cannot conclude a sale with any buyer other than the community group. If the community group does not make a bid within the six months, then the seller can sell freely on the

Assets of Community Value and the Localism Act 2011 *continued*

open market (but subject to the listing). If the community group notifies the seller within the six months that it will not make a bid, then the seller is also free to sell at that point. In either case, no further moratorium can be applied to that sale of that ACV for a period of 18 months. Any sale completed to a third party within the moratoria would be void. The price should be open market value and the right to bid does not confer any particular advantage to a community group beyond giving them time to assemble appropriate financial and commercial strategies to acquire the ACV; it is not a right of first refusal or a right to buy.

5. Implications of listing as an ACV

- a. Land charge – once listed, the ACV remains on the list for five years at a time and its listing is registered as a land charge against the property. Any potential buyer or lender would therefore be warned of the listing and the moratorium requirements.
- b. Compensation – where private individuals have suffered financial loss as a result of an asset being listed, compensation may be payable.
- c. Development/change of use – the listing does not prevent the owner from applying for planning permission to change the use or redevelop the ACV. However, the fact that it is listed as an ACV would be a material planning consideration. Developers may need to consider whether to offer new community facilities in place of and/or as part of any redevelopment proposals in order to achieve planning permission for the original asset.
- d. Sale – the moratoria requirements will be likely to create delays in the sale of an ACV particularly where the six-month moratorium is in place. Note that sales in insolvency proceedings are exempt from the moratorium requirements.
- e. Use – once an ACV is listed, it implies that the community use is 'secured'. However, the regulations impose the moratorium requirements on sale, but do not extend to preservation of use. Community uses would be likely to fall into a class D2 use, which would require planning permission to change to any other use. If no change of use consent was required, it is unclear whether, if that new use restricted the community uses, the ACV would cease to be listed or if anyone would have recourse to any legislation to reinstate the ACV related use.
- f. Demolition – as demolition of the whole of most buildings does not require planning, it is unclear whether listing as an ACV would prevent this action by an owner, or whether it would require reinstatement of an equivalent asset in place of the demolished one.
- g. Financing – community groups may find it challenging to secure sufficient finance to lodge a successful bid for an ACV, particularly without evidence of a trading history. Likewise, where a community group elects not to bid and a bona fide sale to a third party is effected, as the listing remains with the property for five years, and may be renewed, this may be seen as a restriction on the use of the asset, making it a less attractive asset on which to secure financing.
- h. Value – while the sale of ACV should be at open market value, it seems inevitable that listing would be likely to be considered a burden on the asset, reducing its value, particularly as it restricts sale and, potentially, use.
- i. Tenants and leases – landlords of assets that are not listed, but which could potentially fall within the criteria for listing, should be vigilant as to the balance of uses that the asset is used for. If community uses remain subsidiary, it cannot be listed. Landlords may need to consider whether to introduce terms to leases to control excessive community uses where this might lead to the property becoming an ACV.

6. Which transactions escape moratoria?

There are a significant number of transactions that fall outside the ambit of the statutory moratoria. These include, in summary:

- a. disposals made by order of a court or relating to incapacity of an owner or a separation agreement between spouses or civil partners;
- b. disposals made pursuant to a section 106 agreement relating to planning or by compulsory purchase;
- c. sales made by power of sale in relation to a debt or insolvency proceedings;
- d. grant of an agricultural holdings tenancies;
- e. intra-group transfers of companies;
- f. sales where part of the property is listed;
- g. disposal of a church with its land; and
- h. disposals relating to health service provision, or educational purposes.