Neutral citation number: [2025] UKFTT 00669 (GRC)

Case Reference: FT/EA/2024/0197

First-tier Tribunal

(General Regulatory Chamber)

Community Right to Bid

Decided without a hearing on: 4 April 2025

Decision given on: 10 June 2025

Before

DISTRICT JUDGE WATKIN

JUDGE DWYER

Between

DAIRYGEN LIMITED

(TRADING AS THE SHIRE HORSE)

Appellant

and

DERBYSHIRE DALES DISTRICT COUNCIL (1)

EDLASTON & WYASTON PARISH COUNCILLORS (2)

Respondents

Representation:

Appellant:	Mr Joseph Rowlands and Donna Taylor
First Respondent:	James Cunningham, Counsel Ashley Watts (Director of Community and Environmental Services)
Second Respondent:	Mr Matthew Taylor and Mrs Margaret Taylor

Decision: The Appeal is allowed.

REASONS

The following terms will be abbreviated:

The Localism Act 2011	The 2011 Act
Assets of Community Value (England) Regulations 2012	The 2012 Regulations
Asset Of Community Value	ACV

Where this decision refers to section numbers, the reference is to sections within the Localism Act 2011, unless otherwise stated and any reference to a regulation number is a reference to the 2012 Regulations.

DOCUMENTS

1. Prior to the hearing, the Tribunal was provided with a 205-page bundle, an authorities bundle and a Skeleton Argument from the First Respondent.

2. The Tribunal considered all of the evidence in the appeal bundle and oral evidence, specific reference is not made to all evidence considered in reaching the decision. Any references to page numbers within this decision are to page numbers within the bundle.

RELEVANT LAW

3. The Localism Act 2011 (the "2011 Act") requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Assets remain on the list for a period of 5 years, unless the time period is either removed earlier pursuant to subsection 87(5) of the 2011 Act or is amended by the relevant local authority, pursuant to subsection 87(4).

4. Section 88 provides:

> *"(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority –*
>
> *(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

(2) … subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

(3) The appropriate authority may by regulations –

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations.

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular) –

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to –

(i) any of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section –

"legislation" means –

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

"social interests" includes (in particular) each of the following –

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

"statutory provision" means a provision of –

(a) legislation, or

(b) an instrument made under legislation."

Excluded Premises

5. Regulation 3 states:

"A building or other land within a description specified in Schedule 1 is not land of community value (and therefore may not be listed)"

6. Paragraph 1 of Schedule 1 states:

"(1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence.

(2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if –

(a) the land, and the residence, are owned by a single owner; and

(b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.

(3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road,

railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.

(4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.

(5) Land which falls within sub-paragraph (1) may be listed if—

(a) the residence is a building that is only partly used as a residence; and

(b) but for that residential use of the building, the land would be eligible for listing."

Jurisdiction

7. By Regulation 11, an owner of listed land may appeal to the First-Tier Tribunal against the local authority's decision on a listing review in respect of the land.

Realistic to Think

8. In the case of ***Dragonfly Architectural Services Limited v Brighton & Hove City Council [2025] UKUT 051 (AA***) (***"Dragonfly")***, the Upper Tribunal considered what was intended by the words "*realistic to think"*, in section 88(2)(b).

BACKGROUND

9. The appeal (the "**Appeal**") by Dairygen Limited (trading as "the Shire House") (the "**Appellant**") and dated 29 September 2024 arises following a decision of the Derbyshire Dales District Council (the "DC") to list the public house known as the Shire Horse as an asset of community value (an "ACV").

10. The Appellant is the owner of the Shire Horse and its director, Mr Joseph Charles Rowland, is the licensee. Within the Appeal, Mr Rowlands contends that the Shire Horse is not a fundamental part of the local community's wellbeing and social needs and should not be listed as an ACV. He closed the public house to customers in November 2023 after, he states, that the business had ceased to be commercially viable.

11. The DC's review decision is set out in a notice dated 26 March 2024 (the "Decision Notice"). It describes the Shire Horse as a public house with a large car park, outbuildings, and a beer garden. Whilst the Decision Notice concludes that the application for nomination was valid and that the land is not exempt under Regulation 3 and Schedule 1 2012 Regulations. The Appellant does not contend that there is any issue in relation to the validity of the nomination.

12. The DC assessed whether the Shire Horse has a current use which is not an ancillary use, that furthers the social wellbeing or social interests of the community and concluded that the test in section 88(2) was appropriate due to some concern as to whether it was currently in use for purposes which further the social wellbeing or social interests of the local community.

13. The DC concluded that "*the Shire House has played a role in promoting cultural, recreational or sporting interests in the recent past and that this role could recommence in the future.*"

14. The Decision Notice recorded that the ward members did not comment on the application, but the Appellant's representatives stated:

    a) The business had recently reopened.
    b) The nomination contains insufficient information to determine whether the use of the premises contributed to the social wellbeing or social interests of the community.
    c) The future use should not be considered as neither the current use test nor the test of use in the recent past has been proven.

15. The Decision Notice also indicated that other general points were made on behalf of the Appellant, including the effect of the listing, compensation that may be payable and the criteria for community use; no detail is provided.

16. The overall conclusion was that the Shire Horse meets the test in section 88(2) and that it should be listed as an ACV.

17. The decision was reviewed, and the details set out in an undated memorandum that has been considered by the Tribunal (page A15). The review notes that the public house is open every Tuesday evening and that use has been reduced in recent years but that, previously, there was "*actual and current*" use of the building which furthered the social wellbeing or social interests of the local community and that it is realistic to think that there can continue to be non-ancillary use of the public house "*which would further (whether or not in the same way) the social wellbeing or social interests of the local community*".

18. It was also noted that the Shire Horse had been operating as a public house for over 150 years and under the control of the current owner for the past 11 years. Consideration is also given to whether the use of the public house is "local" for the purposes of the 2011 Act. The DC states that there is no definition of "local" but that it would consider that use by residents from Ashbourne remains local use.

19. The DC refers to the decision of the Tribunal in ***4C Hotels (2) Ltd v City of London & Anr [2018] UKDTT CR-2017-0011*** which states:

> *"the "local community" is made up of workers, residents and regular visitors. The City has a small full-time residential population, and it would be inappropriate and impractical to require a residential link between regular users of a community asset and the asset itself and inappropriate to regard the "local community" as being limited to the residential community".*

20. The conclusion of the review was that it is realistic that there could be use of the building as a public house in the next five years.

THE HEARING

21. A hearing took place on 4 April 2025, which was attended by Mr Rowlands and his daughter, Ms Donna Taylor, on behalf of the Appellant. Mr James Cunningham of Counsel and Mr Ashley Watts attended for the DC and Mr Matthew Taylor and Ms Margaret Taylor on behalf of the Second Respondent.

WITNESS EVIDENCE

22. Prior to the hearing, witness statements had been received from Mr Ashley Watts on behalf of the DC and Mr Matthew Taylor for the Second Respondent. A note has been received from Mr Rowlands on behalf of the Appellant (page 154). During the hearing, further evidence was given by Mr Rowlands, Ms Donna Taylor, Mr Matthew Taylor and Ms Margaret Taylor. Mr Watts indicated that he would be prepared to respond to any questions if required.

The Appellant

23. Within his note, Mr Rowlands sets out that the Appellant purchased the pub in November 2012 and describes its location. He explains that the village is small with only 200 residents and around 70 houses.

24. Mr Rowland explains that between 2012 and 2020, the Shire Horse built up a very good reputation for food. However, business was then disrupted by covid from 2020 to 2022 and, subsequently, the chefs left, and the kitchen was closed. Previously, the Shire Horse was open for 7 days a week with a number of regular customers from Ashborne and further afield. Numbers subsequently dwindled and, in turn, he reduced the opening hours, until such point as, he says, the business became unviable, and he closed in November 2023.

25. Mr Rowlands evidence was that very few customers were local and that they all travelled from further afield. He stated that, even when the Shire Horse was trading as a successful restaurant and public house, only around 1% of the customers were local. When asked how he knew, he indicated that he would talk to a lot of the customer and if they came more than once, he would recognise them. He indicated that there would be around 300-400 patrons each week although it is not clear how he would know for certain whether the patrons were from the local towns, albeit it is accepted that he was likely to be aware of whether they resided within the immediate village of Edlaston.

26. In his note, Mr Rowland indicated that he has considered applying for planning permission for the addition of hotel rooms to the premises. He states that the head of the planning authority had given favourable indications but that this has not been

progressed. Mr Rowlands acknowledges that the Shire Horse could continue to trade if it became a good food restaurant with hotel accommodation again. However, in his oral evidence he stated that as he is now 71 years of age, he no longer intends to develop the Shire Horse and has placed it on the market for sale as a public house and potential restaurant. He confirmed that he hoped to sell it as a public house and restaurant and did consider that it could be viable as a restaurant.

27. In his statement, he referred to the fact that he had ceased to serve food after losing his chefs and that he had made significant efforts to recruit another chef but had not been successful. However, he was vague on the details of the efforts that had been made to attract a new chef. Donna Taylor explained that they had advertised for a chef but that the only way of securing a chef would have been by attracting one from further afield or abroad, given the right investment of time and funds.

28. In his note, Mr Rowlands also stated that he had obtained advice to the effect that the premises would be difficult to sell if listed as an ACV (page B150 of the hearing bundle) and that no one would wish to invest money in the property. No further detail has been provided and no written report. It is not clear whether the property agent is commenting on the requirement to deal with the ***community bid*** that would make the process difficult. However, there is also the issue that any purchaser would need to accept the registration and is likely to feel obliged to retain the Shire Horse as an ACV.

29. It is noted that the Village community have their social events in the village hall and that the Shire Horse relies on customers from Ashbourne and further afield.

30. In his evidence, Mr Rowlands also confirmed that he lived in the property and that he pays council tax in respect of the residential element of the property. Whilst he explained that it may be possible for the residential part of the building to be divided from the public house/restaurant, it is not presently divided.

First Respondent – Mr Watts

31. Mr Watts had provided a witness statement and attended the hearing for the purpose of answering any questions, if required. No questions were asked of Mr Watts. However, the Tribunal has considered his statement.

32. Mr Watts noted that the Shire Horse had been listed as an ACV by Mr Braund who had concluded that it fulfilled the criteria of section 88(1).

33. Mr Watts explains that he visited the Shire Horse on 28 August 2024. He described it as a single large building with an attached car park and beer garden. He did not enter as it did not appear to be open. Following an oral hearing, Mr Watts upheld the decision to list the premises but did so pursuant to section 88(2) and not section 88(1) as he was not satisfied that the there was actual current use of the Shire Horse which furthered he social wellbeing or social interests of the local community.

34. Mr Watts explained, however, that he was satisfied that there was a time in the recent past when the Shire Horse did further the social wellbeing or social interests of the local community. He found that it was a popular venue for local people until the Covid 19 pandemic.

35. Mr Watts also considered from the evidence of the Second Respondent about the previous popularity of the Shire Horse and the recovery of other local pubs and concluded that it was realistic to think that there may be time in the next five years when the Shire Horse will again further the social wellbeing or social interests of the local community. He considered that this could be affected by:

    a) the effective recruitment of staff;
    b) improvements in the opening hours.

36. It was Mr Watts' view that the "local community" should be construed widely and that it includes the visitors from Ashbourne and neighbouring villages.

Evidence on behalf of the Second Respondent

37. Whilst Mr Matthew Taylor provided a witness statement to the Tribunal, he only gave very brief further evidence prior to Mrs Margaret Taylor continuing.

38. In his statement, Mr Taylor, a parish councillor, explained how the nomination of the Shire Horse as an ACV had come about following concerns having been raised by

members of the community who were concerned that a vital community asset was in danger of being lost and were concerned that the premises were no longer open to the public for them to meet up and socialise. He considers that there was no other venue within easy access that fulfils the role and that it had been well supported.

39. Mr Taylor considered the changes that had occurred as a result of the Covid 19 pandemic and how the provision of food had become less frequent resulting in reduced customers, followed by a consequential drop in the quality of the beer resulting in the number of customers decreasing further. Thereafter, the opening times were reduced until it eventually closed.

40. The view of the community, according to Mr Taylor, was that the Shire Horse "*would have had*" a vibrant and viable future "*if the management of the premises enabled the premises to be re-opened for food, drink and socialising*". His view appeared to be that the pub would only survive if food was also provided.

Margaret Taylor

41. Whilst Margaret Taylor had not provided a written witness statement to the Tribunal, she requested to speak at the hearing and was permitted to do so. She explained how they had previously frequented the Shire Horse but that as the opening times were reduced, she felt that local people did not know when it was open and, therefore, they gradually stopped going.

42. Margaret Taylor explained that she would have used the Shire Horse and gave an example of having wanted to hold her mother's wake there. She indicated that her funeral director had attempted to make contact but without success. It was apparent that she hadn't attempted to contact Mr Rowlands herself.

SUBMISSIONS, ANALYSIS AND DECISION OF THE TRIBUNAL

43. The Tribunal has considered each of the grounds in turn in relation to section 88(1).
    a) Is the land, or part of it, a residence for the purposes of paragraph 1, Schedule 1?
    b) Do sections 88(1)(a) and (b) apply?

c) Do section 88(2)(a) and (b) apply?

Is the premises a residence?

44. Subparagraph 5 of Schedule1 to the 2012 regulations states that a residence may be listed if:

"(a) the residence is a building that is only partly used as a residence; and

(b) but for that residential use of the building, the land would be eligible for listing."

45. The Tribunal considers that the public house is only partly used as a residence and that that the public house is otherwise eligible for listing. At the hearing, Mr Rowland raised the issue of whether his residence, situation on the first floor of the premises could be excluded from the listing as he considers that it could be occupied separately from the public house.

46. From the description of the layout of the Shire Horse, as provided by Mr Rowlands in his evidence, it did seem as if the residential part of the building could have been split off from the public house. However, this had not been done and it may have required structural alternations for this to occur. Additionally, it was understood from the evidence that it is necessary or, at least, preferable for the residential accommodation to be available for occupation by the licensee of the Shire Horse.

47. Thus, the Shire Horse does not fall within the exemption at paragraph 1 of Schedule 1 of the 2011 Act and the Tribunal does not conclude that it would be appropriate for the Shire Horse to be registered as an ACV without the inclusion of the residential part of the property or for the parts of the Shire Horse to be considered separately.

Application of section 88(1)

48. Section 88(1) provides:

"For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority –

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community."

Reconsideration

49. The approach of the Tribunal in relation to Appeals under section 88 is to consider the decision afresh. In Tarling v Somerset Council and Save the Half Moon Group (CR/2023/0006) Judge Neville considered the approach taken by Lane J in Cook v General Medical Council [2023] EWHC 1906 (Admin) (at 20) which was:

> "20. The relevant legal principles this Court must follow in deciding an application of this kind are essentially as follows. The court must disturb the decision of the IoT only if satisfied that the decision is "wrong". This does not mean that the court is confined to acting. If a public law error is identified, such as would be the position on judicial review period. The way in which the principle operates so as to prevent an unconstrained "merits" review is by requiring this Court to give weight to the views of the specialist tribunal.
>
> 21 Although arising in a different statutory context, it is instructive to note what Andrews LJ has said recently in Waltham Forest LBC V Hussain & ors. [2023] EWC H (Civ) 733 at paragraph 64:
>
> > "'Wrong', as Upper Tribunal Judge Cooke explained in Marshall v Waltham Forest LBC [2020] UKUT 35 (LC) means in this context that the Appellate Tribunal disagrees with the original decision, despite having accorded it the difference. (or 'special weight') appropriate to a decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions. It does not mean "Wrong in law". Put simply, the question that the FTT must address is, does the Tribunal consider that the authorities should have decided the application differently?"

50. In Tarling, Judge Neville concluded that taking the above approach into account it, essentially, made no difference to the outcome. The Tribunal agrees that the same applies in the present case.

Section 88(1)

51. The Tribunal agrees that section 88(1) cannot apply as the Shire Horse was not in *"an actual current use"* which *"furthers the social wellbeing or social interests of the local community"* at the time of the nomination or the determination.

Section 88(2)

52. Section 88(2) applies where the user under consideration has already ceased at the time of the nomination or decision. It provides as follows:

> *"(2) …, a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –*
>
> *(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and*
>
> *(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community."*

53. Based on the evidence, the Tribunal accepts that the premises were used as a vibrant and successful restaurant and public house. This was mainly prior to the pandemic but the Tribunal considers that to be recent in the context of the length of the pandemic lockdown and the subsequent events which resulted in a long recovery period for many businesses. This same point was made in the First-tier decision in ***Dragonfly*** *(*paragraph 20) (as later approved by the Upper Tribunal).

54. In essence, the fact that the Shire Horse was a vibrant and successful business is accepted by all the parties and witnesses. However, they differ in relation to whether the facility furthered the social wellbeing or social interests of the local community. Mr Rowlands contends that the vast majority of the patrons came from further afield and were not "local". He stated that he knew where the patrons came from as he would take telephone numbers and speak to them. The Tribunal notes two main points from this:

a) Mr Rowlands accepts that some patrons were local. He says, perhaps only 1% (which would be 3 or 4 each week out of the 300 or 400 that he reports visited the Shire Horse each week). He did not give any indication that they were the same individual each week. Therefore, over a period of a year, that potentially could be around 150 to 200 visiting each year, which amounts to the entire population or half the population of the village twice a year.

b) The Tribunal is not convinced that Mr Rowlands will always have known where the patrons were from. Whilst it is likely that he will have known those from Edlaston, and those from Ashbourne who were frequent customers, it is less likely that he would have been aware of whether all 300 to 400 customers each week were from further afield that Ashbourne or other local villages, particularly if they visited less frequently.

55. Neither party contended that the use of the premises as a pub/restaurant was not it's primary use (and, therefore, they accepted that the use was not ancillary use) nor that the use of premises as a pub/restaurant did not further the social wellbeing or social interests of those who did use the premises. The Tribunal accepts that the use of the premises as a public house/restaurant is appropriate use for the purposes of section 88 and that the use of the Shire Horse as a public house/restaurant was not ancillary use.

56. On balance, therefore, for the Tribunal concludes that the Shire Horse has been used in the recent past to further the social wellbeing or social interests of the local community.

57. Finally, then consideration needs to be given to whether it is "*realistic to think*" that the primary (non-ancillary) use of the premises to further the social wellbeing or social interests of the local community could be re-established over the next five years.

58. The Shire Horse has now been closed and has been closed for over 12 months. The Tribunal accepts that this is due to a downturn in business due to the Covid pandemic, but the problems were exacerbated by the loss of the chefs and an inability to recruit more chefs (unlike in ***Worthy Developments Ltd v Forest of Dean District Council and***

Anor (CR/2014/0005) ("Worthy") where a member of the community was offering their services to run the pub).

59. Whilst the evidence of Ms Taylor is that it may have been possible to recruit a chef from outside the area or from overseas, she made it clear that this would have come at a cost. The Tribunal is mindful that this was at a time when it was not known whether the Shire Horse would have been sufficient viable as a restaurant to enable the chef to be retained. For the avoidance of doubt, the Tribunal does not consider the viability from the perspective of the restaurant being profitable but from the perspective of practicality and possibility of survival. It is unlikely that a chef will remain at a business in a rural community, if it is unable to attract patrons.

60. Mr Watts 'opinion is based on the pre-pandemic popularity of the Shire horse together with the recovery of other local pubs. However, this does not appear to take into account that the business in this pub did not just flounder during the pandemic; it entirely ceased in the subsequent years. The Tribunal is not convinced that the Shire Horse could be commercially viable in the future, if the numbers return, it would take someone to purchase it and seek to revive it in order for that to occur. This would involve a fair amount of investments including the appointment of chef without any guarantees of future success in an area where there is no existing natural customer base and in circumstances where the business is known to have failed in the recent past.

61. It is also worth noting that this is not a situation where any potential purchaser has come forward or whether the local community has given any indication of attempting to pull a community bid together (as was the case in ***Worthy).*** The Tribunal also accepts the evidence of Mr Rowlands when he says that he now intends to retire and that he will not re-establish the pub/restaurant; he is 71 years of age.

62. Thus, is not about whether it is possible for the business to be commercially viable but whether it is realistic to think that a purchaser is likely to be prepared to take the risk of buying a public house/restaurant which is situated in a rural area and which has previously failed and put in both the investment to purchase the freehold, recruit and pay staff, purchase stock, spend on any necessary marketing. It is not clear that Mr

Watts gave full consideration to this. The Tribunal considers that it would have been mentioned if he had done so.

63. Whilst no expert report was produced in relation to the prospects of the Shire Horse being purchased for use as a public house, Mr Rowlands did indicate that he has been advised by a property agent that it would be difficult to sell the Shire Horse if it is listed as an ACV due to the necessary investment. Whilst limited weight is given to the statement, the Tribunal accepts that it is likely that it would be more difficult to sell the Shire Horse with the restriction of the listing in place.

64. In relation to whether it is realistic to think that there is a time in the next five years when the Shire Horse could be used to further the social wellbeing or social interests of the local community, the Tribunal was divided.

65. The Tribunal found that the likelihood of it being used as a public house/restaurant in the future was not realistic. The prospect of a buyer being found who would purchase and put the appropriate investment into a former public house/restaurant was unrealistic in light of its troubled trading history and rural location.

66. Whilst the Shire Horse could be purchased by a person who is able to do the cooking themselves, the Tribunal consider that the prospect of that is more fanciful than realistic. Furthermore, the Tribunal members accept that if the Shire Horse cannot be sold, Mr Rowlands will not recommence the business but that he is more likely to remain there and use the premises as a dwelling.

67. The Tribunal has considered the case of **Dragonfly** in detail as this was a case where the First-tier Tribunal considered that it was unlikely that a premises, the Montreal Arms, would return to use as a public house which would further the social wellbeing or social interests of the local community within five years but it was still held to be realistic that it could have been so used. However, the situation in that case was different as the Montreal Arms had previous been used to further the social wellbeing or social interests of the local community in that guise. Judge Neville recognised that pubs can be run on a lower cost basis even as "hobbyist establishments". In fact, the Montreal Arms had been running on an unprofitable basis until it was forced to close

by the pandemic. However, this is quite different to the Shire Horse that reopened but closed due to lack of patrons.

68. As the Shire Horse is a public house/restaurant in a rural location it can be distinguished from the Montreal Arms which was a public house in a busy urban area and, therefore, had the potential to be run on a minimalist basis. The Tribunal considered it inherently unlikely that the Shire Horse would be revived in the next five years due to the investment that would be required, its recent trading history and its location within a sparsely populated village.

69. Therefore, whilst there was a time in the recent past when an actual use (not ancillary use) of the Shire Horse furthered the social wellbeing or interests of the local community, the Tribunal does not consider that it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Shire Horse which would further (whether or not in the same way as before) the social wellbeing or social interests of the local community. As such, the appeal is allowed.

APPEAL

If either party is dissatisfied with this decision, an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Administrative Appeals Chamber, against decisions of the First-tier Tribunal in Information Rights Cases (General Regulatory Chamber). Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Judge R Watkin

27 May 2025