

The All-Party Parliamentary Group on Pubs
c/- CAMRA

BY EMAIL

20 May 2021

Dear Madam/Sir

Supporting Local Rural Pubs Post COVID-19

I am writing to you as the Chairman of the Bratton Fleming Community Benefit Society Ltd which was incorporated for the purpose of working to re-establish The White Hart, the last pub in Bratton Fleming, as a viable and valuable pub at the heart of our rural village community. The White Hart was closed in 2012 and purchased by the current owner who is intent on converting the property into several residential dwellings against the widespread wishes of the village.

The importance of public houses, particularly in rural areas, has been well-documented over recent years. The 2016 report by Oxford University researchers, 'Functional Benefits of (Modest) Alcohol Consumption' identified that 'data suggest that respondents who have a 'local' that they visit on a regular basis are more socially engaged, feel more contented in their lives, and are more likely to trust other members of their community'. The recent All-Party Parliamentary Beer Group report 'Unlocking Pubs' Potential' recognised that 'Pubs have a huge amount to offer locally and nationally, from catalysing high street regeneration to combatting loneliness'. The Government itself has publicly recognised their importance with the announcement in December last year ("Funding boost for the great British pub").

As the longer-term effects of COVID-19 work their way through communities (and community businesses), it is a sad inevitability that not every business owner will have the ability or desire to recover from the crisis. Very many pubs and other tourism businesses have already closed or are in very real danger of closing because of the crisis. This will have a very real impact on the local economy and job opportunities here, across the Southwest and, more generally, across the country. These closures will include a number that would, in normal times, be perfectly viable businesses.

This situation presents an opportunity for individuals and 'vulture' funds (particularly the less scrupulous) to snap up premises of closing businesses with the intention of 'flipping' them for a quick pay-out irrespective of the longer-term impact on the communities concerned. The most obvious danger would be the conversion of commercial property to residential dwellings for a quick profit. If this is allowed to happen rural communities will lose their local amenities (and the associated job opportunities). Once lost, there is no realistic prospect to re-establish those amenities in the future, even with local support. This must be something

that the Government should do what it can to prevent. 'Vulture' funds should not be able to hold villages to ransom!

Clearly, as the Chancellor of the Exchequer has made clear, it is not the role of Government to save every business impacted by the pandemic and there will be closures. However, it is equally clear, we believe, that there is a distinction to be made between the loss of one or more pubs in a town where there are several choices and, as is the case in Bratton Fleming, the loss of the only pub, particularly where (as here) it is for reasons unrelated to the viability of the business. The loss for Bratton Fleming is vastly greater than, say, the closure of a pub in nearby Barnstaple.

Our experience shows that the current regulatory regime can be misused to frustrate the intentions of the Government's policies and the reasonable expectations of the local community. The White Hart, here in Bratton Fleming, ceased trading in 2012 (after a series of failed tenant arrangements put in place by the corporate owner). Following its purchase by the current owner in 2014, it was designated as an ACV. Since that time, the current owner has made no attempt to open the pub or entertain any offers to purchase it at or near market value. He has made it clear he is looking for *"a price to reflect the site value for six good houses"* despite there being no reasonable prospect of planning consent being obtained for such a development.

To date the Society and the Council have had to defend multiple appeals against the ACV, against planning decisions and against Enforcement Action (for residential letting in breach of planning), and most recently an application for a Certificate of Lawfulness (notwithstanding the ongoing Enforcement Action). This has consumed significant resources and funds of both the Council and the Society. While it is absolutely right that everyone should be treated fairly and have the right to present their position, the current regulatory regimes are, we believe, too easily capable of being abused to the detriment of local communities – especially communities that are not as fortunate as we have been to have the resources to pro-actively respond to the various actions of a determined property developer.

Most recently the ACV designation of the White Hart was overturned. The judge determined that the ACV designation should fail. At paragraph 17 of their decision, they state:

"Notwithstanding that the pub has been in existence since 1825 I do not accept that activities that ceased almost 8 years prior to the listing could be said to have been 'in the recent past' "

The clear message here is, therefore, that if you are patient, you can overcome an ACV. Nothing else has changed in relation to the White Hart pub. And there is a credible buyer willing to purchase the premises at market value and reinstate it as a pub. The current owner has shown that, as currently structured, an ACV offers little protection where the owner is prepared to wait.

The White Lion in Cray's Pond¹ has a similar history to the White Hart. It was designated as an ACV around the same time as the White Hart. It also has an owner who is unwilling to run

¹ <https://www.savethewhitelion.com/post/owners-appeal-dismissed>

it as a pub or to sell it. The current owner of the White Lion also appealed the continuing designation of the White Lion as an ACV. However, the tribunal in that case refused that application and stated:

“it is realistic to think that there is a time in the next five years when there could be use of the White Lion that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”.

We are unable to reconcile these two decisions.

North Devon Council will not appeal the decision of the judge in the case of the White Hart as it would not be an appropriate use of Council funds in the current environment. This judgment will, therefore, remain unchallenged even though, to my mind, it offends the legal principles of equity; that the owner’s own actions can undermine the purposes of the ACV scheme (and with such ease) should not be possible.

We are concerned that, for many communities facing a similar situation, their resources will be exhausted too quickly, and the local facility will be lost through ‘attrition’.

It is worth noting that the Forest of Dean Council decided to withdraw its Compulsory Purchase Order for the Rising Sun in Woodcroft near Chepstow because it was unable to commit the resources necessary to respond to the current owner’s appeal and to prepare properly for the public enquiry within the designated time frames. Without the support and assistance of Central Government, we believe that many councils across the country will have to make similar decision as they face into the operational and economic challenges arising.

Central Government could assist local councils in exercising their powers of compulsory purchase without the need for a change to the planning regime. At the moment, no council will be particularly interested in exercising their CPO powers in these circumstances. There is the risk that if the CPO is overturned on appeal (which appeal there will almost certainly be) then the council becomes liable for all costs. Communities rarely have the funds to cover these costs (as the council might reasonably expect), so the council does not take action.

If Central Government (either directly or by empowering the Plunkett Foundation) underwrite these costs for councils (perhaps upon payment of a small fee by the local community) then the risk could be pooled across multiple cases. At the moment, the Plunkett Foundation has a policy of not funding community enterprises where there is a contentious element; they engage where there is a willing seller, something that could easily be changed

We believe that there are ways to ensure that justice is served while ensuring that communities do not lose out. Help is now urgently needed by the many communities around the country who regrettably find themselves in similar circumstances or will do so as the consequences of the pandemic unfold. With the support of Central Government, we believe communities can achieve a much quicker resolution than we have been able. This will assist local communities retain their vital local facilities, support local jobs, and help ensure the long-term rural identities are maintained, so preventing villages from being “hollowed out” and the inevitable damage that this does to the rural economy.

We would ask that the following options be considered:

- i. Clarifying the ACV rules so that the actions of an owner cannot overcome the intent of an ACV (i.e. that the tribunal in the White Lion hearing was correct and that the decision in the case of the White Hart was wrong);
- ii. Amending the ACV rules to include an obligation to sell to a community group if they are prepared to offer "current market value" this should prevent an owner leaving the building empty and not trading in a suitable commercial fashion – so removing the need for a CPO;
- iii. The provision of funding, perhaps via the Plunkett Foundation, to Councils to support them to discharge their obligations in relation to the compulsory purchase of property (in particular the cost of the independent survey and any appeals).
- iv. Provision of central underwriting for potential costs orders if a compulsory purchase order is successfully challenged;
- v. Explicit confirmation that community properties purchased in this manner can be sold on to private buyers who are committed to retaining the identified community use;
- vi. Confirmation that the purchase by a local authority or a community group and onward sale to a private buyer to enable that buyer to restore the property to a working pub is within the provisions of HMRC's FA03/S60 relating to Stamp Duty; and
- vii. Provide that local plans have the force of law (rather than merely advisory) where such plans have criteria to protect amenities in local communities – this would mean that tests of non-viability and the marketing for 12 months of the property at an agreed market value (as our Local Plan currently advises) would have to be satisfied before any planning application could be considered (so giving communities the time to come together to save their amenities and may reduce the need for Councils to exercise their powers of compulsory purchase).

We are aware of the current 'More than a Pub' programme. Unfortunately, this does not provide any practical solution to the situation that we face (and many communities will face) – a developer acquiring the property and refusing to sell to anyone wishing to run the premises as a pub because they believe they will get planning to redevelop the site into residential dwellings. This is the fundamental challenge to the current regime which needs addressing.

The risks for rural communities cannot be overstated at this time. Action now to save the precious resources that are local pubs is vitally important. I would be happy to discuss any aspect of this submission if that would be of assistance.

Yours faithfully

The Bratton Fleming Community Benefit Society Limited