

Legal Viewpoint: Court decision provides important guidance for future decisions on Assets of Community Value



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In a recent case, the High Court has provided some important pointers on the interpretation of the statutory framework for Assets of Community Value (ACV). The decision, which revolved around a proposed listing of a sports field in Leeds as an ACV, is likely to have implications for future listing decisions.

TV Harrison, a community interest company, successfully legally challenged Leeds City Council's decision to refuse to list the sports field as an ACV. The longstanding sports fields had been restored by the local community and used for informal leisure and recreational activities. The community group initially applied for ACV status for the sports field in April 2020, an application which was rejected by the council in June 2020. However, this decision was quashed by the High Court in November 2020 by consent, and in December 2020, the application was redetermined by the council - and refused again.

Applying the relevant statutory test in section 88(1)(b) of the Localism Act 2011, the council concluded that it was not "realistic to think" that the community use of the sports field could continue. This assessment was made on the basis that the sports field had been allocated for housing in the 2019 local plan and the council had "firm and settled plans" to develop the field for housing.

The community group brought a legal challenge on 4 grounds which were, in summary, that the Council had:

- (1)** taken into account immaterial considerations, including the allocation of the land for housing and the intentions of Leeds School Sports Association (LSSA) to sell its freehold interest and dispose of its lease;
- (2)** failed to avoid the appearance of apparent bias by entering into prior contractual obligations obliging it to assist LSSA in ensuring that any ACV nomination was dismissed. Also placing undue and unexplained weight on the intentions of the council in its capacity as landowner, proposed purchaser and developer of the field;
- (3)** failed to take into account relevant material considerations, in particular the opposing factors which might mean that the land could not in the end be developed for housing; and
- (4)** failed to apply the correct statutory threshold and/or acted irrationally.

The challenge was successful on all 4 grounds.

Regarding grounds 1 and 3, the High Court concluded that the decision was a one-sided approach to the application of the statutory test which failed to undertake the required holistic analysis. In particular, it neglected to consider the future uncertainties concerning the Council's proposed redevelopment plans. On ground 2, the High Court held that the terms of the contractual agreement with LSAA and the contents of the decision, taken together, were sufficient to give rise to the appearance of apparent bias. As to ground 4, the High Court concluded that the Council had not understood and/or given proper effect to the section 88 test.

In terms of wider implications, the High Court set out the following important interpretation of the key section 88(1)(b) test. It stated: *"The legislation does not require there to be only one "realistic" future use of a building or other land. Several possibilities may each be realistic. The legislation does not require a potential future use to be more likely than not to come into being, in order for it to be realistic. The fact that the most likely of a number of scenarios is one which would not satisfy the statutory criteria (e.g. a change of use from pub to residential) does not mean that any other potential future use is, without more, rendered unrealistic. It is only if the non-compliant scenario is so likely to occur as to render any compliant scenario unrealistic, that the non-compliant scenario will be determinative of the nomination."*

The Harrison judgment therefore sets a helpful precedent for future ACV decisions moving forwards. Councils, community groups, and developers should pay close attention to it.

Case: *TV Harrison CIC, R (On the Application Of) v Leeds School Sports Association [2022] EWHC 130*