



Mr H Rai
Communities and Neighbourhoods
Melton Borough Council
Station Approach
Burton Street
Melton Mowbray
LE13 1GH

3rd July 2017

Dear Mr Rai,

Re: Our clients – Mr and Mrs David Rutt

1. Please accept this letter as Mr and Mrs David Rutt's representation to Melton Mowbray Council's Community & Social Affairs Committee review of the listing as an Asset of Community Value of the Windmill Pub, Redmile. The owners have taken advice from specialist counsel who has advised them as to the shortcomings of the listing nomination and subsequent listing decision.

2. We wrote to the Council by letter dated 27th April 2017 highlighting the following egregious failures in the Council's conduct in listing the Windmill pub:
 1. 'The determination to list was made without providing the Rutts with a copy of the nominating group's nomination form. This is an egregious failure to

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observe principles of natural justice. It fundamentally impeded the owners' ability to understand the basis of the listing decision. In this I would note the listing decision baldly refers to considering evidence without reciting or detailing any of it so that the Rutts could not discern the basis of the decision from your letter.

2. The determination was made on the basis of s.88(2) of the Localism Act 2011 (the past use provisions). The Windmill is a going concern open for most of the week. The determination should have been made under s.88(1) of the Act. The sections are not interchangeable and it is legally unsafe to proceed otherwise. I understand from my clients' meeting with you of 25th April 2017 that it was suggested the sections can be considered in the alternative.
3. The determination was made with a manifest failure to serve notice upon the current occupier of the Windmill (Jason Gambrill - an employee of my clients). In this the Council appears to have relied upon the nomination form which erroneously listed my clients as the occupiers despite also listing their separate home address in the village'.

No.1a Post Office Lane

3. Subsequently it has come to our attention that there is another basis upon which the listing is negligent and unclear. The nomination form from the Parish Council was accompanied by a 'Site boundary plan' (see section 7 of the nomination form). We were provided with a copy of this plan for the first time in an email from Ms Stephanie Haskell on 28th June 2017. This plan is a land registry plan with a red line boundary marked (LT185414) and a green line for title LT266339 included. The green line delineates the residential dwelling built pursuant to the appeal decision of Inspector Austey in 2005 under Appeal ref: APP/Y2430/A/04/1148229. That dwelling is at no.1a Post Office Lane. The green line land is within the red line boundary and is not in any kind of community use. It is a residential dwelling.
4. The Council made its listing decision based upon this plan. The letter informing the Rutts of this listing simply states that 'Therefore the Windmill Inn will be placed on the Council's List of Assets of Community Value'. No reference is made to the plan

and no clarification is made as to what boundary line is relied upon or to the green line which lies within the red line boundary.

5. From the foregoing it must be assumed, since no caveat was expressed, that the listing is in the terms pursued by the Parish Council and the plan upon which they relied. As such, we are advised that it appears that the Council has listed not only the Windmill Inn and its curtilage but also the residential property under title reference LT266339. The listing of a solely residential property is erroneous and this error in the listing must be revised and clarified in the Council's review.

No.5 Post Office Lane

6. The Act is clear that in order to designate a building or other land as an Asset of Community Value both parts (a) and (b) of section 88(1) or (2) must be satisfied. Given that the Windmill pub is currently operating (as of 13th June 2017) section 88(1) applies:

(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.

7. Self-evidently the pub is in the 'current use' for a non-ancillary use furthering community social wellbeing thereby satisfying s.88(1)(a). The landowner would not

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seek to suggest otherwise. However, there remains an issue telling against the Windmill's listing:

i. The listing is too extensive and seeks to list land in use for an ancillary use contrary to the provisions of s.88 so that even if the listing is confirmed it can only be on a more limited geographical area.

8. The failure of the nomination to satisfy the non-ancillary use component of s.88 of the Localism Act 2011 is a clear legal error. It is established practice now that in determining a listing an authority can determine to partially list some of the land nominated if it is apparent that a component part of the land does not satisfy the test for listing. This practice has arisen and is accepted by the Tribunal in part on the basis that a refusal to list based upon only part of a piece of land fulfilling the test would simply lead to an amended nomination for a lesser area of land which would be unnecessarily inefficient and wasteful of public resources.

9. Partial listing was an issue which was discussed in the Gullivers Bowls Club v Rother DC (CR/2013/0009) decision because part of the land had been out of community use for some time. However, it did not have to be decided because the judge decided to uphold the decision to list the whole of the club's land including the disused bowling rink. Judge Warren made the following *obiter* comments at para. 9 that:

“My conclusion on this makes it unnecessary for me to explore an issue discussed at the hearing as to whether a local authority, or the Tribunal on appeal, can decide to list part of a nominated site. Any such judgment is likely to be very fact-specific. I would comment only that, for myself, I can find nothing in the Act to suggest that Parliament intends to forbid local authorities to take what might appear in some cases to be the fair and sensible course.”

10. In this case, it is apparent that the proposed listing cannot be confirmed across the whole piece of land and could only be partial at most. Specifically, a portion of the

area listed (in the north eastern corner of the holding) is not in any use related to the pub and the furthering of social wellbeing.

11. There is an area (marked in blue on the attached plan and illustrated in the appended photographs – it is the fenced in hot tub behind the green garden gate) which was previously within the use of the pub as part of the rear yard to the pub ('the Garden Area'). If it wishes, the Council is invited to confirm the layout of the Garden Area by way of officer or member site visit. It is no longer in any use related to the pub. However, it is within the freehold of pub land. It has been incorporated into the rear garden of 5 Post Office Lane, Redmile, Nottingham NG13 0GG. The Garden Area was fenced off from the pub and enclosed to be only accessed from the rear of 5 Post Office Lane over twelve years ago. This property is a neighbouring property adjoining the pub site and in current occupation by Mr and Mrs Rutt. The area has been turned into a decking and hot tub area for the use of the occupants of 5 Post Office Lane. For the avoidance of doubt, it has no pub use whatsoever. It is not used as a barrel yard for the pub or as recreation space for pub users or even pub staff. It is not in use as recreation space for the occupant of the flat above the pub (Mr Justin Gambrill). It is in use as garden/recreation space of a separate dwelling. It is in private use by the occupants of a dwelling with no use which furthers social wellbeing or community ends. This area cannot be described as in a non-ancillary or even an ancillary use furthering social wellbeing. **As such it cannot be listed and as such the listing should be amended to exclude this area.**

12. The Garden Area land is not in use for purposes furthering the social wellbeing of the community. It has not been any such use since at least 2005. The listing was made without reference to Mr and Mrs Rutt and no site visit was carried out (certainly not one including the relevant Garden Area) prior to listing (see shortcoming quoted at 1 in letter of 27th April 2017). The Garden Area must be removed from the ACV listing.

13. From the foregoing it is apparent that the listing nomination is flawed. It can only be confirmed on part of the nominated site. The Garden Area to 5 Post Office Lane is not in community use and cannot be in the future.

14. It is trusted that the above information will be presented to the Melton Mowbray Council's Community & Social Affairs Committee review on 12th July 2017 and that you will be suggesting amendments to the ACV listing in light of the above. It would be appreciated if you were able to confirm prior to the Committee meeting the amendments you will be suggesting to the Committee. This would avoid Mr and Mrs Rutt having to be legally represented at the meeting at a significant and unnecessary additional cost.

Yours sincerely

Paula Daley

BSc (Hons), PGDip, MRTPI

PLANNING DIRECTOR

PHOTOGRAPHS OF THE GARDEN AREA



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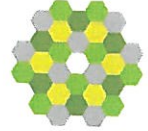
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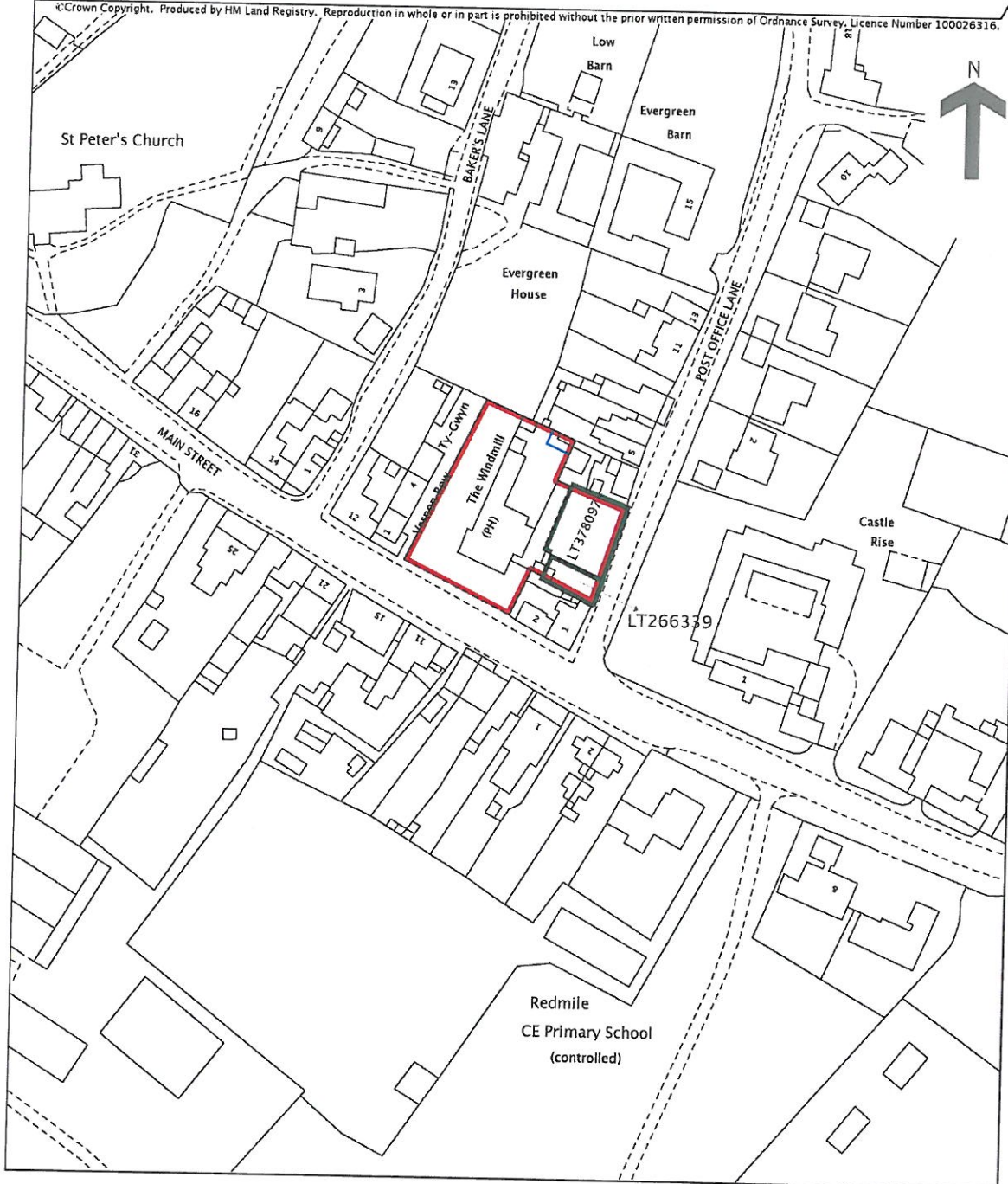
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HM Land Registry
Current title plan

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