

Change in Permitted Development Rights for Public Houses

Kieron Hodgson considers the recent changes:

The Government recently announced that it would intervene to protect public houses (Class A4) that are listed as Assets of Community Value (ACV), by removing permitted development rights for changes of use or demolition.

Pubs that are listed as an ACV: the changes to permitted development rights from 6th April 2015

Following 6th April 2015, planning permission **will be required for any change of use or demolition of a public house** registered as an ACV requiring the local planning authority (LPA) to determine a change of use or demolition in line with its Development Plan policies. For the avoidance of doubt, where a pub is listed as an ACV the following permitted development rights from A4 to other uses **are withdrawn** as of 6th April:

- Change of use to Class A1 (shops) Class A2 (financial and professional services) Class A3 (restaurants and cafés);
- Change of use to flexible use Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafés), and Class B1 (business), for a period of two years;
- Change of use to a state funded school for one academic year; and
- Demolition of the building.

As set out in The Assets of Community Value (England) Regulations 2012 (the 'ACV Regulations'), local authorities are required to remove an asset from the List no later than five years from the date of entry on the List. Therefore, this removal of permitted development rights takes effect for a period of five years beginning with the date on which the building was entered on the ACV List.

A freehold sale (disposal) does not alter the ACV listing however, a building may be removed from the ACV List sooner if an appeal is successful.

If a public house is listed on an ACV register and is offered for sale, the local community is given six months to prepare a bid to buy it. This can lead to major delays in achieving a disposal, can be of concern to banks or providers of finance, can increase holding costs, can delay development and can extend the time a site sits vacant or derelict.

Pubs not currently listed as ACV: the risks

The new rules introduced by Government set down further obligations for owners/developers of pubs where the specified building is not currently listed as an ACV. These rules relate to all Class A4 uses where the owner wishes to exercise his / her permitted development rights.

A written request must now be submitted to the local authority to determine whether the building has been the subject of an ACV nomination prior to carrying out any development that has the benefit of permitted development rights.

The requirement to check with the local authority means that it will not be possible to proceed with development where no notification of a listing has been received; **the developer must actively check that the property has not been nominated.**

The developer must then wait for a period of 56 days following the date of the request to the local authority. After this initial period permitted development rights must be utilised within one year of the request being made subject, however, to the local authority notifying the developer of an ACV listing nomination of the building being listed during that period.

As set out in the ACV Regulations, the local authority must decide whether the building should be included in the ACV list within eight weeks of receiving a nomination. In reality, a listing can occur well within the eight week period.

The principal point is that the new legislation forces owner to write to the Council if they want to exercise their permitted development rights and the legislation effectively requires the owner to 'tip off' the Council of their intentions to implement change. The risk is that the tip off may enable the Council to notify and publicise the owners intention to change, thereby stirring up local interest and giving local community groups the opportunity to nominate as an ACV.

The relevant planning and localism legalisation concerning changes of use and ACV's is complex and owners should be aware of the provisions but importantly the risks of ACV nomination and what can be done to mitigate them.