

**WAVENEY DISTRICT COUNCIL
LOCALISM ACT 2011, PART 5, CHAPTER 3
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012
SOUTHWOLD HOSPITAL SUFFOLK**

**NOTICE OF DECISION ON REVIEW OF
LISTING OF ASSET(S) OF COMMUNITY VALUE**

1. I have been duly appointed by Waveney District Council (“the Council”) as the ‘officer of appropriate seniority’ empowered to carry out and make any requisite decision on a Review of an earlier decision taken on behalf of the Council that Southwold Hospital should be added to the List of ‘Assets of Community Value’ required to be kept by the Council by *Section 87* of the *Localism Act 2011* (“the Act”). This Review is conducted pursuant to *Section 92* of the Act, and *Schedule 2* of the *Assets of Community Value (England) Regulations 2012* (“the Regulations”).
2. The initial decision in question, dated 18 January 2016, was taken in response of an application dated 26 November 2015 and made by Southwold Town Council (‘ the Town Council’) . I personally had no involvement in the taking of the decision, or in the procedure leading to it.
3. This present Review Decision relates to the request made by NHS Property Services as owner of the land (‘ the owner’) in a letter dated 15 March 2016 that a Review should be carried out in respect of the decision of 18 January 2016.
4. As required by *paragraph 6* of *Schedule 2* to the Regulations, the Council duly issued a notification of the procedure which it intended should be followed for the purposes of the Review. The Owner did not ask for an Oral hearing. In accordance with *paragraph 7(2)* of *Schedule 2* I considered whether I should in any event hold a hearing, but decided that it was not appropriate. The Council’s Procedure provides that I may in my discretion decide to conduct a site visit to the land or property in question, but I have concluded that the issues in this review are such that it is not necessary.
5. This review has therefore proceeded ‘on the papers.’ I have considered the Owner’s written submission, with its four appendices (the initial decision notice of 18 January 2016, the Town Council’s application and two local authority review decisions involving health care facilities made respectively by Uttlesford District Council and Malvern Hills District Council) and the Town Council’s

response which is accompanied by 16 annexes. Annexes 1 and 2 are decisions of the First Tier Tribunal (FTT) on appeals from council review decisions. 3, 4 and 5 relate to decisions by other councils and the remaining annexes contain evidence as to the history and use of the Southwold Hospital.

6. I have read all of this documentation, but I will only refer in this decision notice to those parts of it concerning issues relevant to this decision.

7. Section 88(1) of the Localism Act 2011 provides that, subject to certain exceptions which are not relevant here, land is land of community value if in the opinion of the authority

- a) *An actual or current usethat is not an ancillary use furthers the social well-being or other 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 and which will further whether or not in the same way, the social well-being or social interests of the local community.*

8. The owner in its review submission takes issue with the Council's decision under Section 88(1) a). Reference is made to Section 88(6) in which social interests are defined as including the following; cultural interests, recreational interests and sporting interests. It is pointed out that these examples are primarily leisure activities and therefore only similar activities are capable of being considered within the definition of social interests. The owner regards the term 'social well being' as a *construct which relates to the interaction of people and relationships with each other within a community*. Reference is also made to the Plain English Guide to the Localism Act, and the examples that it gives; community centres, libraries, swimming pools, village shops, markets or pubs.

9. The owner says that, contrary to these definitions, Southwold Hospital comprises a Healthcare facility (within Planning Use Class C2) that is used for the delivery of health care services. The crux of the owner's argument then follows in this sentence; *there is no evidence of any social interaction taking place on the land which could be construed as furthering the social well being of the community*.

10. The owner does not criticise the council's decision under Section 88(1) b) that it is realistic to think that a use which may be different, but still fits the statutory definition, will continue. I have therefore not addressed this point. The result of this review therefore hinges on my assessment of the correctness of the decision made under sub-section (1) a).

Reasoning

11. Firstly, I must make the point that I regard decisions made by other councils as being at best of limited persuasive authority. Decisions of the FTT are of rather better persuasive authority, if they are relevant, although not as authoritative as those of the Upper Tribunal which in accordance with section 3(5) of the Tribunal, Courts and Enforcement Act 2007, is a superior court of record.

12. The owner points to the Uttlesford and Malvern Hills review decisions as examples of a council being persuaded to follow the same argument that it makes in this case about a health care facility. The Town Council counter this by referring in paragraph 3.15 of their submission to three other councils whose local guidance indicates that they regard hospitals and health centres as proper subjects for listing, and then identifying in paragraph 3.16 five hospitals currently listed as ACVs (see also their annexes 3, 4 and 5).

13. All of this material only serves to show that there is as yet no firm consensus amongst local authorities as to how to treat premises of this kind, and no strictly binding authority. I have decided that I should make my own decision, applying the normal principles of statutory interpretation, and not be influenced positively or negatively for the review by any of the material relating to other councils produced by either party.

14. I remind myself that the onus is on the applicant to satisfy the Council on the balance of probabilities that a community use as defined is occurring.

15. I refer again to the owner's definition of social well being quoted in paragraph 8 above; interaction and relationships with others within a community. The Town Council (Para 3.7) acknowledge this as an unexceptional description of the term *social* but complain that it lacks the positive content of *well being*. I conclude that an asset will promote social well being if it provides for interaction between people, the formation or strengthening of friendships and social networks, particularly within a identifiable community, and supports a sense of local identity, and serves to counter negative factors such as loneliness and social isolation.

16. I accept the owner's broad point that the flavour of this part of the Localism Act and the relevant guidance (including the Plain English Guide) is generally indicative of leisure and recreational uses. However it is in practice impossible to draw fine distinctions. Some uses which undoubtedly fall within section 88 such as pubs and community centres are places where people spend leisure time, and where the main purpose of the building is that of people enjoying

themselves, having conversations with friends or making new friends. However, other uses which, as the owner says, are included in the guidance achieve something similar more indirectly. A village shop exists to sell goods and a library to allow books to be read or borrowed, but both will also facilitate social interaction. Admittedly, the Library might qualify as a place which furthers social (cultural) interests without reference to social well being, but that is not the case with the shop.

17. I find myself in agreement with the Town Council in their paragraph 4.4. The owner's assertion that there is no evidence that social interaction furthering the social well being of the Community takes place on the hospital premises, defies common sense. The existence of the Hospital has enabled many in the community to be treated or cared for in a location where it is easier for family or friends to visit, particularly if they do not have their own transport. Social interaction and well being will have arisen through patients being served by staff who might be neighbours or local friends/acquaintances.

18. I find the contents of annexes 6, 7 and 8 - the evidence of Drs Walker and Eastaugh and of Matron Jones and Dr Tucker particularly relevant to this point. I take particular note of Dr Eastaugh's comments about the importance to anyone is ill, and particularly to those with terminal illness, of local associations and connections.

Conclusion- Decision

19. I conclude that the decision to list Southwold Hospital as an Asset of Community Value was correctly made because at the time of listing the use of the building furthered the social well being of the local community, and it was realistic to think that there could continue to be non-ancillary use for the building which would further the social well being or social interests of the local community.

ARTHUR CHARVONIA

Strategic Director, Waveney District Council

15 June 2016