

Executive Member for Finance and Performance Decision Session

Report of the Assistant Director of Finance, Asset Management and Procurement

Applications for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents applications to list the following assets as Assets of Community Value (ACV), for consideration by the Council.
 - a. The Jubilee Hotel Public House, Jubilee Terrace, York, YO26 4YU
 - b. The Wenlock Arms, 73 Main Street, Wheldrake, YO19 6AA
 - c. The Minster Inn, 24 Marygate, York, YO30 7BH

Background

2. On 6th March 2014 the Cabinet Member approved the proposals for the implementation of a process for the Community Right to Bid legislation to ensure the Council has a process in place for dealing with any applications and the establishment and maintenance of a list of Assets of Community Value.
3. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.

4. The definition of 'community value' is set out in the regulations and can be summarised as
 - The actual current use of the building/land furthers social well being or the social interests of the local community
 - Realistically this use can continue for the next 5 years
 - There was a time in the recent past where actual use furthered these aims.
5. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.

The process

6. The regulations set out how potential assets can be listed which in brief is as follows:
 - **Nomination** – this can be by a voluntary or community body with a local connection. Includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils).
 - **Consideration** – the local authority have 8 weeks to make the decision which is decided by an 'appropriate group'. The process adopted for CYC is an initial consideration by the Capital and Asset Board (CAB) which has cross-Council representation at a senior level (the Board is chaired by the Director of CBSS). A report is then written to the Executive Member for Finance and Performance who will then formally take the decision. If the nomination is successful the asset details are entered onto the 'Community Value list' – see below – and also the local land charges register. If unsuccessful then the details are entered onto an 'unsuccessful nominations' list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.
 - **The 'Assets of Community Value' List** – this needs to be published and reviewed regularly and must be accessible in electronic and paper format.

- **Disposal of assets on the list** – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do then a 6 month period for that group to prepare it's bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal. There are a number of exceptions contained within the legislation that mean that this moratorium period does not apply and the owner does not need to give notice of it's intention to sell. This includes when there is a legally enforceable requirement, which pre-dates the listing, to sell to a specific party.
 - **Compensation** – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value). This compensation is determined by the local authority (the adopted policy states that this is carried out by the Capital Asset Board) and the owner can have the compensation reviewed within 8 weeks and appeal to a Tribunal if still not satisfied. It should be noted that compensation can only be claimed by private owners (no compensation for public authorities) and the government has not provided any funding for this compensation (or for any costs associated with any of these provisions). However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value.
7. Three applications have been received under this legislation, for a decision by the Executive Member.
 8. To list an asset as an ACV the asset needs to meet the definition as set out in the Localism Act 2011 which states that the local authority has to ask itself
 - a. whether an actual current use of the building or other land that is not an ancillary use furthers the well-being or social interests of the community, and

b. whether 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 well-being or social interests of the local community.

If the Listing Authority considers that both elements of this definition are met and the applicants are a valid organisation or group to make the nomination then the Listing Authority must list the asset.

9. It should also be noted that changes to the General Permitted Development Order have been made with effect from the 6th April 2015, which means that where a pub is listed as an asset of community value a planning application is required for a change of use or demolition of the pub building. However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value

The Jubilee Hotel Public House, Jubilee Terrace, York, YO26 4YU

10. The freehold of The Jubilee Hotel Public House is owned by Enterprise Inns PLC. The nomination is being made by Friends of the Jubilee. Legal Services have confirmed that a nomination must be considered by the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. In accordance with the regulations, the freehold owner, and the tenant occupier of the property have been informed in writing, that the application has been made. They have been invited to make representations regarding the nomination.

Enterprise has made the following observations to the nomination:

“The pub is not unique in the area and there are other pubs in the immediate vicinity including the Leeman Rose around the corner as well as numerous licensed premises within ½ mile away in the City Centre all offering a range of services and facilities.

They have already exchanged contracts for sale on 7th April 2016 which is prior to this nomination and completion is due 31st August 2016. The contract is unconditional.

The community have failed to support the pub over the years. The pub has had a number of tenants and a couple of periods of closure since March 2010. The current publicans are paying £1 per week rent and are still not making a profit.

If the pub sale were not to complete for any reason the tenant will give notice and it's highly likely the pub will close.

Over the last 3 years Enterprise have spent in excess of £60,000 on repairs/improvements to the property and this has had little impact on the sustainability of the property as a business.”

Legal Services have advised that nothing in the relevant legislation prevents ACV registration of a property that is in the process of being sold if the Council considers that the nominated property meets the criteria specified in Section 88 of the Localism Act 2011. Indeed, the legislation imposes a statutory duty on the Council to include any and all nominated property on the ACV register if the Council is satisfied that the nomination is valid and considers that the property is land of community value in accordance with Section 88.

A disposal of land listed on the ACV register pursuant to a legally binding pre-existing contract that was already in place before the land was entered on the ACV register is not subject to the moratorium period provided for in the relevant legislation.

11. The Friends of The Jubilee have nominated the The Jubilee Hotel Public House and stated that the public house is making a tangible contribution to the social wellbeing and social interests of the local community. It is a meeting point for community groups and sports teams, and offers activities and hosts parties for a wide range of age groups. The Friends state that some similar activities and amenities are not available at nearby community facilities or other local public houses within 1 mile.
12. The application meets the basic criteria for listing.

The Wenlock Arms, 73 Main Street, Wheldrake, York, YO19 6AA

13. The freehold of The Wenlock Arms Public House is owned by Enterprise Inns PLC. The nomination is being made by Wheldrake Parish Council. Legal Services have confirmed that a nomination must be considered by the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. In accordance with the regulations, the freehold owner, and the tenant occupier of the property have been informed in writing, that the application has been made. They have been invited to make representations regarding the nomination
14. Wheldrake Parish Council has stated that The Wenlock Arms is enjoyed as a social centre and has the only restaurant in the village. It is enjoyed by all ages and helps to promote the wellbeing of the people Wheldrake and also supports village fundraising events.
15. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list even where they are currently run as commercial businesses.
16. The application meets the basic criteria for listing and no objection has been raised by the owner or occupier to the nomination

The Minster Inn, 24 Marygate, York, YO30 7BH

17. The freehold of The Minster Inn Public House is owned by Marstons Pubs Ltd. The nomination is being made by The Friends of the Minster Inn. Legal Services have confirmed that a nomination must be considered by the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. In accordance with the regulations, the freehold owner, and the tenant occupier of the property have been informed in writing, that the application has been made. They have been invited to make representations regarding the nomination and no representations have been received.

18. The Friends of the Minster Inn state that The Minster Inn makes a tangible contribution to the local community, providing a valuable venue for leisure and entertainment. It is popular with patrons of all ages, from pensioners to families.

The pub has its own successful chess team and cycling society. It provides facilities for meeting and socials for organisations such as York Ukuleles, York Outdoor group, The Harrier Running club, Minster Wheelers, York Cycling Club & The Goth Society.

The Minster Inn is also a significant heritage asset. It is included on the York Open Planning Forums Local List as a building of importance and interest to local communities. It is also on CAMRA's list of Historic Pubs in York.

19. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list even where they are currently run as commercial businesses.
20. The application meets the basic criteria for listing and no objection has been raised by the owner or occupier to the nomination

Implications.

21. **Financial** – Compensation may be payable by the Council to the owner of any property which is listed. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

Human Resources (HR) – none

Equalities, Crime and Disorder and IT - none

Legal – Organisations falling within any of the following categories are eligible to submit an ACV nomination relating to property within their local area:

- (i) a parish council
- (ii) a charity, non-profit making company or community interest company with a local connection to the nominated property

(iii) an unincorporated association which has at least 21 members registered to vote in the local area

The organisations who have submitted the nominations covered by this report fall within the above criteria and are therefore entitled to submit their ACV nominations.

Paragraph 7 of the report contains the statutory definition of 'land of community value'. If the listing authority considers that a nominated property falls within that definition then it must include the property on its ACV register.

Property – All property issues included in the report

Other – none

22. Risk Management

There are no significant risks in this application.

Recommendations

23. The Executive Member is asked to.

Agree to the applications to list

- a. The Jubilee Hotel Public House as an Asset of Community Value (ACV) for the reasons outlined above
- b. Wenlock Arms as an Asset of Community Value (ACV) for the reasons outlined above
- c. The Minster Inn as an Asset of Community Value (ACV) for the reasons outlined above

Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Contact Details

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Report
Approved



Date 1 July 2016

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All

Wards Affected: Holgate, Guildhall & Wheldrake

For further information please contact the author of the report

Annexes

Annex 1 – The Jubilee Hotel Public House – Application to add to the List of community assets

Annex 2 – The Wenlock Arms - Application to add to the List of community assets

Annex 3 – The Minster Inn - Application to add to the List of community assets

Annex 4 – Current list of assets of community value