

Executive Leader (incorporating Finance and Performance) Decision Session

Report of the Assistant Director of Regeneration and Asset
Management

Applications for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents an application to list the Deramore Arms Public House, Heslington, York, as an Asset of Community Value (ACV), for consideration by the Council.

Background

2. An application has been received, for a decision by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.
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 'land of community value' is set out in section 88 of the Localism Act 2011. To be considered as an asset of community value the land or property must satisfy either of the following criteria:
 - a. an actual current non-ancillary use of the building or other land furthers the well-being or social interests of the community and 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

OR

- b. there is a time in the recent past when an actual non-ancillary use of the building or other land furthered the social well-being or social interests of the local community and it is realistic to think that there is a time within the next 5 years when there could be non-ancillary use (whether or not the same use as before) that would further the social well-being or social interests of the local community
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.
 6. 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 process

7. 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. Under the Council's procedures the Executive member is the decision maker. 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.

- **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)..

The Deramore Arms, Heslington, York

8. The freehold of The Deramore Arms is owned by Greene King plc. The nomination is being made by Heslington 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. The Parish Council are an eligible body. In accordance with the regulations, the freehold owner of the property has 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. The property is currently vacant. However, the owners are currently actively

seeking a new licensee, with a view to reopening the pub as soon as possible.

9. The Parish Council state in the nomination form that The Deramore Arms is a village community pub serving a varied customer demographic in an area where this type of facility is needed, given that it is one of two public houses that serve a significant immediate population, including the York University campus. The Parish Council say that the other pub, the Charles XII, is deliberately student orientated, with cheap drinks and jukebox, whereas the Deramore Arms is designed to appeal to local residents and diners, as well as students. They also state that the community facilities offered by the Deramore Arms are not replicated elsewhere nearby.
10. Local/University sports teams meet in the pub, and it has a wide appeal to all social groups, as well as attracting local families to the dining facility. The large car park at the rear has hosted small market events for local residents, such as garden plant sales and car boot sales.
11. The Parish Council claim that temporary loss of the Deramore Arms is keenly felt by the local community, which they want to protect and cherish. With the right investment from the pub company, the Parish Council feel that the Deramore Arms can serve residents well into the future.
12. Full details are provided in the attachment to the nomination form in Annex 1.
13. 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.
14. The application meets the basic criteria for listing and no objection has been raised by the owner to the nomination. Whilst the property is currently vacant it has been used for the purposes described above, within the recent past. It is therefore recommended that the Deramore Arms, Heslington should be listed on the ACV register.

Implications

15. **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 – Legal advice has been incorporated within this report.

Property – All property issues included in the report

Other – none

Risk Management

16. There are no significant risks to this application.

Recommendations

17. The Executive Member is asked to.

Agree to the listing of the Deramore Arms Public House, Heslington, York as an Asset of Community Value (ACV), because it meets the required criteria.

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

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Report
Approved



Date 2nd March 2017

Ward Affected: Heslington

For further information please contact the author of the report

Annexes

Annex 1 – The Deramore Arms Public House – Application to add to the List of community assets

Annex 2 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value