

Executive Leader (incorporating Finance and Performance) Decision Session

9 April 2018

Report of the Assistant Director of Regeneration and Asset Management

Application for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents an application to list Strensall Library and Associated Flats, 19 The Village, Strensall 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.

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. 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 its 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 its 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).

Strensall Library and Associated Flats, 19 The Village, Strensall, York.

7. The freehold of 19 The Village, Strensall is owned by City of York, Council (CYC). The nomination is being made by Strensall 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. Strensall Parish Council are an eligible body. In accordance with the regulations, the freehold owner of the property, and the occupiers of the property have been informed that the application has been made. They have been invited to make representations regarding the nomination.
8. The associated flats are on the first floor of the premises and are leased by CYC to Yorkshire Housing on a 29 year lease, which commenced on 17th April 2003. The lease limits the use of the demised premises to 'residential letting of two self contained flats'. The following legal advice has been received regarding the property's eligibility for listing as an ACV.

9. Regulation 3 of the ACV Regulations 2012 states that any property falling with Schedule 1 of those Regulations is not “land of community value” and so cannot be listed as an ACV. Paragraph 1(1) of Schedule 1 refers to “a residence together with land connected with that residence”. Legal advice is that the two flats leased to Yorkshire Housing are “residences” since they are used for residential purposes. (Paragraph 2 of Schedule 1 states that ‘residence’ is “a building used or partly used as a residence”).
10. Paragraph 1(5) of Schedule 1 states that a residence or land connected with a residence] may be listed (as an ACV if:
 - (a) The residence is a building that is only partly used as a residence; and
 - (b) But for that residential use of the building, the land would be eligible for listing
11. It is considered that paragraph 1(5) is intended to permit ACV listing of a building that is used both for residential and non-residential purposes, rather than applying to the situation here where one part of a building is used entirely for residential purposes and another part of that building is used entirely for non-residential purposes. In that case paragraph 1(5) would not apply to the 2 flats
12. As the 2 flats are residences it is considered that they cannot be ACV property.
13. The next question then is whether the library is “land connected with that residence”. Paragraph 1(2) of Schedule 1 states that land “is connected with a residence if:
 - (a) The land, and the residence, are owned by a single owner; and
 - (b) Every part of the land can be reached from the residence without having to cross land which is not owned by that single owner”

Section 107 of the Localism Act 2011 states that (for the purposes of the ACV legislation) “owner” is the freehold proprietor, except that someone who holds a lease granted for a period of at least 25 years shall be deemed to the owner instead of the freehold proprietor. As Yorkshire Housing are holding a lease of the 2 flats that was granted for a Term of 29 years, Yorkshire Housing (rather than CYC) are the ‘owner’ of the 2 flats for the purposes of the ACV legislation, whereas the CYC is the owner of the library. Therefore the library and the flats

are not owned by a single owner. Accordingly it is considered that the library is not “connected with” the flats for the purposes of the ACV legislation. As the library does not fall within Schedule 1 it can be listed as ACV if the decision maker considers that it satisfies the criteria set out in Section 88 of the Localism Act as referred to in paragraph 4 above.

14. Strensall Parish Council state in the nomination form that the library is a resource centre for people in the village. It is a meeting place where parishioners can access a huge range of local regional and national information, which is crucial for everyday life. It acts as an IT centre for those who do not have a home computer for job seeking, learning etc.
15. Full details are provided in the nomination form in Annex 1.
16. In the light of the above legal advice it is clear that the two residential flats cannot be listed as ACVs. However, it is open to interpretation as to whether the library can be listed as an ACV. On balance, it is recommended that Strensall Library should be listed on the ACV register, on the basis that the library is self contained and is a community resource.

Consultation

17. Consultation has taken place with owners and occupiers of the property.

Options

18. The application to list Strensall Library as an Asset of Community Value can either be accepted or rejected. There are no other options as sufficient information has been provided to make a decision.

Analysis

19. If the asset is listed then the legislation states that the owner can, within 8 weeks of the decision date apply for a review of the listing as set out in paragraph 7 of this report.

20. Although there is no right of review by the applicants, if the decision was made not to list this property this would have to be on the basis that the qualifying criteria as set out in the Localism Act 2011 had not been met.

Council Plan

21. A Council that listens to residents through working with communities and partners.

Implications

22. **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

23. There are no significant risks to this application.

Recommendations

24. The Executive Member is asked to consider:

Listing Strensall Library, 19 The Village, Strensall, York, as an Asset of Community Value (ACV).

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

Contact Details

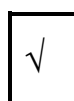
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Report
Approved



28/03 2018

All

Ward Affected: Huntington and New Earswick

For further information please contact the author of the report

Annexes

Annex 1 – Strensall Library and Associated Residential Units – 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

CYC City of York Council