

**Executive Member for Finance and  
Performance Decision Session**

19 December 2016

Report of the Assistant Director of Legal and Governance

**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 Grey Horse Inn, Main Street, Elvington, YO14 4AA.
  - b. Osbaldwick Primary School Playing Fields, The Leyes York, YO10 3PR.

**Background**

2. Two applications have 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 the ACV provisions is to ensure that property (land and building) assets which are currently used (or have been recently been 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 principal use of the building/land furthers social well being or the social interests of the local community and there is a realistic prospect that a principal use of the property (not necessarily the same use

as present) will also further the social well-being or social interests of the local community (whether or not in the same way as at present)

OR

- In the recent past a principal use of the property has furthered the social well-being or social interests of the local community and there is a realistic prospect that within the next 5 years a principal use of the property (not necessarily the same use as previously) will again further the social well-being or social interests of the local community (not necessarily in the same way as previously).
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. Such bodies include parish councils, neighbourhood forums, charities and community interest groups but exclude public or local authorities (except parish councils). An unincorporated association that is not registered a charity must have at least 21 members registered to vote in the local area before it is eligible to submit a nomination.
  - **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 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 a decision to list which must be completed by a senior Officer 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 its intention to sell. This includes sale of the property to a party pursuant to a formal contract for sale which was entered into before the listing of the property as an ACV.

- **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 successful appeals and costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

### **The Grey Horse Inn, Main Street, Elvington**

7. The freehold of The Grey Horse Inn is owned by Punch Partnerships (PTL) Ltd. The nomination is being made by Elvington Parish Council.
8. 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.
9. 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.
10. The Parish Council state that The Grey Horse Inn is the only pub in the village. It is centrally situated facing the village green and is central to the life of the village community.
11. The pub is not only used for food and drink, but it also hosts quiz nights, darts and other games evenings. It is particularly popular as a focal point on summer weekends and bank holidays. Full details are provided in the attachment to the nomination form in Annex 1.

12. 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.
13. The application meets the basic criteria for listing and no objection has been raised by the owner or occupier to the nomination. It is therefore recommended that The Grey Horse Inn Elvington should be listed on the ACV register.

### **Osballdwick Primary School Playing Fields, The Leyes, York**

14. The freehold of Osballdwick Primary School playing fields is owned by City of York Council and the nomination has been made by Osballdwick Parish Council.
15. 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.
16. The nominator, Osballdwick Parish Council, feels that the site performs a social function as outdoor recreational space for the school pupils. Should the 'single site consultation' currently underway eventually lead to the closure of this school site, then the Parish Council seek to secure the playing fields as an asset for the area.
17. The Parish Council are aware that Osballdwick Sports Club have a long held wish to provide bowling green facilities in the area and this site would present an ideal opportunity to provide such a facility.
18. The property is used solely as playing fields for the school pupils in delivering the educational curriculum. No one apart from the school has access to these playing fields.
19. A small number of appeals which have come before the First Tier Tribunal have concerned school playing fields. Cases have either failed or succeeded on the basis of whether uses other than by the school have been more than ancillary uses. While it could be said that the existence a local school by itself further the social well being and interests of the local community the decisions of the First Tier Tribunal reinforce the view that, where the use of the playing fields is solely educational, the criteria for listing will not be met. It is therefore reasonable to take the view that the Osballdwick School Playing

Fields should not be regarded as an asset of community value. Accordingly it is recommended that Osbaldwick Primary School Playing fields should not be listed on the ACV register.

20. Although not relevant to the decision the Executive Member may wish to note that there are specific statutory procedures protecting school playing fields by requiring the consent of the Secretary of State to their disposal.

### **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** – legal advice has been incorporated within the body of this report

**Property** – All property issues included in the report

**Other** – none

### **Risk Management**

22. There are no significant risks to this application.

### **Recommendations**

23. The Executive Member is asked to.

- a. Agree to the listing of The Grey Horse Inn, Elvington as an asset of community value as it meets the required criteria.
- b. Reject the application to list Osbaldwick Primary School playing fields as an asset of community value as it does not meet the definition of an Asset of Community Value set out in the legislation.

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**

9 Dec 2016

**Ward Affected:** Bishopthorpe and Wheldrake, Osbaldwick

**For further information please contact the author of the report**

## Background Papers

None

## Annexes

- Annex 1 The Grey Horse Inn, Elvington – Application to add to the list of community assets.
- Annex 2 Osbaldwick Primary School Playing Fields – Application to add to the list of community assets.
- Annex 3 Current list of assets of community value

## Abbreviations used in report

ACV Assets of Community Value  
PTL Punch Partnerships Limited