

## **Decision Session – Executive Member for Finance and Major Projects**

Report of the Director of Housing, Economy & Regeneration.

### **Application for Community Right to Bid under the Localism Act 2011**

#### **Summary**

1. This report details an application to list The Ship Inn, Acaster Malbis, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from Acaster Malbis Parish Council.

#### **Recommendations**

2. The Executive Member is asked to consider the officer recommendation to:

Approve the listing of The Ship Inn, Acaster Malbis, York (“the Property”) as an Asset of Community Value (ACV) for the reasons outlined within this report.

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

#### **Background**

3. The 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.
4. The freehold of the Property is owned by EI Group PLC.
5. 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 up for disposal 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.

6. 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. 88(1) 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. 88(2) 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
7. 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**

8. The regulations set out how potential assets can be listed which in brief are as follows:
  - **Nomination** – this can be by a voluntary or community body with a local connection. This includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils).
  - **Consideration** – the local authority has eight 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 further details in the report – 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. Neither the Localism Act nor the ACV Regulations give the nominating organisation any right to appeal a decision of the local authority that the nominated property is not an asset of community value/does not satisfy the necessary S.88 criteria referred to above.

- **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 is provided 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 to 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).

### **The Ship Inn (“the Property”)**

9. According to Land Registry records, the freehold of the Property is owned by EI Group PLC. The Property is currently open and trading as a public house. The nomination is being made by Acaster Malbis Parish Council (AMPC). 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. AMPC, as Parish Council for the area in which the nominated land is situated, are an eligible body entitled to submit a nomination for the purposes of the ACV regulations.

10. In accordance with regulations requiring that the owner of the nominated property be notified of a nomination, EI Group PLC has been informed in writing that the application has been made. They have been invited to make representations regarding the information.
11. The occupier of the Property has also been notified of the ACV application in respect of the Property. No response has been received from the parties consulted.
12. AMPC state in their nomination that the parish of Acaster Malbis has approximately 750 registered voters, the population increases during the summer months due to visitors residing at the local caravan parks.
13. Acaster Malbis has restricted amenities in that there is no school nor shops and the only community activities in the village occur at the Memorial Hall, a local tap room (which opens just once weekly) and the Property. It is the only pub in the village and it enables people to meet and socialise.
14. The Property has had a number of different occupational tenants since it was bought by EI Group on 30<sup>th</sup> October 2000. There have also been occasions when the pub has been without a tenant. The pub has been subjected to flooding which has resulted in period of temporary closure from time to time. AMPC consider that the closure of the pub on these occasions severely and negatively impacted social interaction.
15. AMPC believe it is imperative that the Property be listed as an Asset of Community Value on behalf of the residents of Acaster Malbis.

### **Analysis**

16. If the decision is to approve the ACV application to nominate then the owner of the property has a statutory right to request a review of that decision by submitting a review request to the Council within 8 weeks of the decision date. (If the decision is to reject the ACV nomination application, the legislation does not give the nominating group any

right to appeal that request though they could potentially seek a judicial review (J.R.) of the decision by submitting a J.R. claim to the High Court).

### **Options & Recommendation**

17. The application to list the Property as an Asset of Community Value can either be accepted or rejected. There are no other options as it is considered that sufficient information has been provided to make a decision.
18. Based on the information provided, it is recommended to list the Property as an Asset of Community Value.

### **Council Plan**

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

### **Implications**

#### **20. 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).

#### **21. Human Resources (HR) – none**

#### **22. Equalities, Crime and Disorder and IT - none**

#### **23. Legal – Advice and comments have been sought from Legal Services and incorporated within this report.**

#### **24. Property – All property issues included in the report**

#### **25. Other – none**

### **Risk Management**

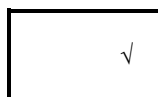
There are no significant risks to these applications.

## Contact Details

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Report  
Approved



6/12/22

All



**Ward Affected: Bishopthorpe**

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

## Annexes

Annex 1 –The Ship Inn, Acaster Malbis, York – Application to add to the list of assets of community value.

Annex 2 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value

AMPC – Acaster Malbis Parish Council