



BY EMAIL ONLY

Tim Bradley
Asset Manager
City of York Council
Tim.bradley@york.gov.uk

Dear Sir,

Thank you for your email on the 18th March. I have sought specialist advice on the matter and would like to put forward the following response on behalf of the company.

1 INTRODUCTION

- 1.1 I write in response to the nomination of The Jubilee, Balfour Street, York (the "Jubilee") as an asset of community value by Elizabeth Whynes, on behalf of The Jubilee Community Pub (the "JCP"). The nomination states that this organisation is shortly to be constituted as "Friends of Jubilee York Limited".
- 1.2 Tri-Core Developments Limited ("Tri-Core") has owned the Jubilee since 31 August 2016. The Jubilee was previously used as a public house; however, this use ceased in April 2016. The Jubilee has been vacant since this date.
- 1.3 The Jubilee was registered as an asset of community asset on 1 July 2016.
- 1.4 The nomination by The Jubilee Community Group seeks to effectively renew the registration of the Jubilee. It is notable that the Jubilee was marketed for sale in September 2016. The Jubilee was listed as an asset of community value at this time. An email dated 8th September 2016 from Tim Bradley Acknowledges this. Notice to make relevant disposal was made on 9 September 2016. The JCP therefore could have expressed an interest in acquiring the Jubilee, and this would have triggered the six moratorium period. However, they did not. This appears to demonstrate that the JCP is not interested in acquiring the Jubilee.

2 THE APPLICATION

- 2.1 The JCP has submitted a short statement referring to the previous use of the Jubilee as a public house. They also refer to the use of the Jubilee for meetings, events and sports / leisure clubs. While no dates are included in JCP's statement, the use of the Jubilee described in JCP's statement must have taken place over 5 years ago.
- 2.2 A planning appeal was determined in 2019, following the refusal of an application to convert the Jubilee into 4 apartments and retain a public house use on the ground floor. The Inspector described the public house use, in his appeal decision of 30 October 2019, as follows:

"The written evidence paints a picture of a business in decline over the final years of the Jubilee being open to the public, takings were on the wane and footfall down as time passed. The final six months of the most recent tenancy seemed to make a loss."¹

This is backed up by a statement by Jeremy Hansbro regional manager of Enterprise inns who were the previous owners of the Jubilee prior to its sale to Tri-core as follows:

"since March 2010 three different operators have been unable to attract enough customers to make the Jubilee a going, viable concern with two of them being forced to liquidate the business. The latest tenancy was taken out in August 2015 and even though the rent was only £1 a week, the pub still failed to operate at a profit"

<https://yorkmix.com/weve-closed-jubilee/>

- 2.3 JCP's application includes a description of the proposed boundary of the listing and also a red-line plan. The red-line plan is drawn around the entire building, the yard at the rear and the land to the east of the Jubilee (which was formerly used as a beer-garden).
- 2.4 The description in JCP's statement does not indicate whether they contend that the whole site, within the red-line plan, should be listed as an asset of community value; however, this letter proceeds on the assumption that this is what JCP is seeking.

3 DEVELOPMENT OF THE JUBILEE

- 3.1 I will not seek to revisit the recent planning history of the Jubilee. However, it is highly relevant to note that Tri-Core submitted an application for planning permission in August 2020 for:

"Alterations and conversion of part of first floor and all of the roofspace of the public house building to 3no. self-contained apartments and retention of public house on ground floor and altered function room on first floor (resubmission)."

- 3.2 The application is due to be presented to the Council's planning committee shortly. The case officer is recommending that planning permission be granted.
- 3.3 The development seeks permission to convert part of the first floor and all of the second floor / roofspace into three self-contained flats. The ground floor and cellar is proposed to be used as a public house. The existing first floor function room would be horizontally sub-divided, with a new lower ceiling introduced. The upper part of the function room and roof space would become a self-contained flat. The remaining floor space below would remain as a function room with a new staircase introduced from the lobby of the bar area
- 3.4 Therefore, if planning permission is granted, part of the first floor and second floor will be put to residential use; while a tenant will be sought for the public house use on the cellar, ground floor and part of the first floor.
- 3.5 A tenant has not been found for the public house use; however, if planning permission is granted, Tri-Core will continue marketing it for this use.

¹ Planning Appeal Reference: APP/C2741/W/18/3213654

4 RELEVANT LEGISLATION

- 4.1 Section 88 of the Localism Act 2011 defines what "land of community value" is. It states:

"(1)...a building or other land in a local authority's area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) 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 wellbeing or social interests of the local community.

- 4.2 It is clear that the Jubilee is not currently in any form of use. Therefore, section 88 (1) is not applicable.

- 4.3 Section 88 (2) states that "a building or other land" can be land of community value if the following criteria are met:

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community..."

- 4.4 It is to be noted that there is no definition in the statute of the phrase "in the recent past"

- 4.5 Section 108 of the Localism Act 2011 includes the following definitions:-

"“building” includes part of a building;

...

“land” includes—

(a) part of a building....”

5 ANALYSIS

- 5.1 For the Council to list the Jubilee as an asset of community value, the Council would need to answer both of the following questions in the affirmative:

5.1.1 Did the use of the Jubilee in the recent past further the social interests of the local community; and

5.1.2 Is it realistic to think that in the next five years there could be a non-ancillary use of the Jubilee which would further the social interests of the local community?

Did the use of the Jubilee in the recent past further the social interests of the local community?

- 5.2 The JCP refer to a number of activities taking place at the Jubilee over five years ago.
- 5.3 It therefore needs to be considered whether these activities occurred in the "recent past".
- 5.4 There is no statutory definition of the term "recent past", as used in section 88 of the Localism Act 2011. A sensible and common-sense interpretation of this phrase should therefore be applied. Applying such an interpretation, it appears clear that a gap of over five years means these activities were not carried out in the recent past.
- 5.5 On this basis, the first test in section 88 (2) of the Localism Act is not met.

Is it realistic to think that in the next five years there could be a non-ancillary use of the Jubilee which would further the social interests of the local community?

- 5.6 The Council's case officer has recommended that planning permission be granted for the conversion of the Jubilee into 3 apartments and a public house.
- 5.7 It is therefore realistic to think that in the next five years there could be a residential use and public house use on the site. However, JCP appear to be requesting that the whole site be registered as an asset of community value.
- 5.8 It is not realistic to consider that part of the first floor or the second floor will be put to a use which would further the social interests of the local community in the next five years. The only realistic use for this part of the site is residential.
- 5.9 Therefore, it is considered that the application does not pass the second test either.

6 CONCLUSION

- 6.1 Having reviewed the statutory tests, it appears that the Jubilee has not been put to a use in the recent past which furthers the social interests of the local community. Further, it is not realistic to think that the whole of the Jubilee site will be put to a non-ancillary use in the next five years which would further the social interests of the local community.
- 6.2 On this basis, it is submitted that the application should be refused.
- 6.3 I would be grateful if you would confirm in writing that these submissions will be taken into account when the Council determines JCP's application.

Yours sincerely

Dominic Woodward
Director
Tri-Core Developments Ltd
01924 692011