

Decision Session – Executive Member for Finance and Performance

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 Jubilee Hotel Public House, Balfour Street, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from the Friends of Jubilee York.

Recommendations

2. The Executive Member is asked to consider:

Approving the listing of The Jubilee Hotel Public House, Balfour Street, York, as an Asset of Community Value (ACV) for the reasons outlined above.

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 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.

5. 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
6. 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

7. 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 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 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 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 Jubilee Public House

8. The freehold of The Jubilee Hotel Public House is owned by Tri-core Developments. The nomination has been made by a community group named in the nomination application form as "The Jubilee Community Pub" ("the Nominating Organisation"). (In the nomination form the nominating community group indicate they intend to constitute/incorporate the group as a Community Benefit Society called "Friends of Jubilee York Limited"). 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. In order to meet the eligibility criteria the nominating group must have at least 21 local members who are registered at an address in the Council's area as a local government elector in the electoral register. The list of members supplied with the nomination form has been checked against the electoral register, and it is confirmed that at least 21 members are listed. Accordingly the nominating community group satisfies the eligibility criteria and is entitled to submit an ACV nomination in respect of the property in question. 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.

9. The Nominating Organisation have stated in the nomination that the public house is the only ACV in the Leeman Road area, and that the applicants are a group actively trying to salvage the huge potential which they claim that this pub has. They also state in the nomination form that when the pub was open it was an excellent example of a community pub serving a wide customer demographic in a distinct and isolated community, which has sadly lost a number of pubs, businesses and points of local interest. This includes the Junction pub, the post office and the Leeman Road WMC. They consider that the Jubilee made a tangible contribution to the social wellbeing and social interests of the local community, advising that it was a meeting point for community groups and sports teams and hosted parties for a wide range of age groups, including the elderly, for whom the Jubilee was an escape from the loneliness of living on their own. They advise that the Jubilee provided the only dedicated licensed function room in the area and consider that this a key part of the property as a community asset. They also advise that it was specifically referred to by the inspector in rejecting a recent planning appeal in October 2019. The scheme in question "would result in the unacceptable loss of community facilities."
10. The Nominating Group argue that the renewal of the ACV status would enable them to sustain one of the few protections on the asset. There is a serious intent on their part to make the community's forward facing ambitions for the property to become a reality, and the Nominating Group are working on plans to reopen the pub, either on a freehold or leasehold basis. If successful, their aim is to reopen the

Jubilee as a pub and for other resident based services, run by the community for the community.

11. Full details are provided in the nomination form in Annex 1.
12. A representation has been received from Tri-Core Developments Ltd (the owner) objecting to the nomination, which is summarised below;
13. The owner acquired the property on 31st August 2016, by that time the pub had closed (in April 2016). It was registered as an ACV on 1st July 2016 following an application received in May 2016 from a different community group called "Friends of the Jubilee". The property was marketed for sale and notice to make a relevant disposal was made by the owner in September 2016. At that point the nominating community group could have expressed an interest in bidding, but did not. The last use of the property was over 5 years ago. The inspector in determining the planning appeal in Oct 2019 wrote "The written evidence paints a picture of a business in decline over the final year of the Jubilee being open to the public, takings were on the wane and footfall down as time passed. The final months of the most recent tenancy seemed to make a loss."
14. The owner of the property submitted a planning application in August 2020 for "alterations and conversion of part of the first floor and all of the roof space into three self-contained apartments, retention of the public house on the ground floor, and altered function room on the first floor (re-submission)." That planning application was determined by Planning Committee on 15th April 2021 – the planning application was refused and the property remains empty.
15. Pursuant to Section 88 of the Localism Act 2011, as there is no current use of the property, in order for the Council to consider whether to list the property as an ACV, it needs to consider whether the activities listed in the application, that last took place over 5 years ago, are within the "recent past." Neither the Localism Act nor the Assets of Community Value Regulations specify what constitutes the "recent past". The owner argues that a "common sense interpretation" would be that a gap of over 5 years is not in the recent past. The owner also contends that it is not realistic to think that there could be a principal/non-ancillary use of the whole of the property which would further the social wellbeing or social interests of the local community. (They acknowledge that it might be realistic to think there could be a use of part only, but not the whole of, the

property as a pub because they envisage part of the property being developed for use as flats and part of the property possibly trading again as a pub). Accordingly, the owner contends that the property does not satisfy the criteria specified in either Section 88(1) or Section 88(2) and so states that the ACV nomination should be rejected/refused.

16. Full details of the owner's submission are provided at Annex 2.

Analysis

17. 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. This property is currently listed as an asset of community value – it was entered onto the Council's register of assets of community value in July 2016 following nomination by a community group in May 2016. In accordance with the ACV regulations the property is due to be removed from the list in July 2021 (because pursuant to Section 87(3) of the Localism Act 2011 the Council is obliged to remove a property from its ACV register once 5 years have elapsed since entry on the register).
18. The property (Jubilee Hotel) has not been used as a public house (or for any other purpose) since April 2016. However, the asset is still considered capable of being used as a public house and no planning consent has been given for a change of use. The planning application referred to in the owner's submission was refused at the planning committee meeting on 15th April 2021.
19. As there is no current use of the property it is considered by Property Services and Legal Services that the criteria specified in Section 88(1) of the Localism Act referred to above are not satisfied. Therefore it then needs to be considered whether the alternative criteria specified in Section 88(2) are satisfied, namely whether:
 - (a) 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**
 - (b) 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

20. 'Recent Past' is not defined in either the Localism Act or the supplemental Assets of Community Value Regulations. It is a matter of interpretation thus as to whether it is considered that April 2016 is within the 'recent past'. In reaching a decision on the nomination application, it is for the Executive Member for Finance and Performance to consider and determine whether or not in their opinion April 2016, i.e. 5 years ago, is within the 'recent past'.
21. In considering ACV applications some local authorities have taken the view that 'recent past' means the preceding 5 years, whereas some other local authorities appear to use a three year period as a 'working test' when applying the 'recent past' test.
22. Looking at case law, in the case of *Scott v South Norfolk District Council* the Tribunal judge declined to overrule the local authority's decision that six years ago was not in the 'recent past'. In the case of *Crostone v Amber Valley District Council* the Tribunal judge stated that what constitutes the 'recent past' will depend upon all the circumstances in a particular case – the nominated property in that case was also last used as a pub and the judge stated that the length of time for which the property had been used as a pub was relevant in deciding whether the time when last used for that purpose was in the recent past. The implication of the judge's comments in that case being that the longer the period of use furthering community benefit then the longer the period that would constitute/fall within the recent past. It is understood that the Jubilee had been used as a pub for over 100 years prior to its closure in April 2016 so on this basis it is considered that April 2016 may be within the 'recent past' but this is a matter for the Executive Member for Finance and Performance to decide.
23. If the Executive Member for Finance and Performance considers that there has not been a principal/non-ancillary use of the property in the 'recent past' (which furthered the social wellbeing or interests of the local community) then Legal Services advise that they do not need to consider whether in their opinion "*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*". This is because in order for the property to be an asset of community value it needs to satisfy both, not just one, of those criteria given the insertion of "and" between S.88(2)(a) and S.88(2)(b).

24. If however the Executive Member for Finance and Performance does consider that April 2016 is within the 'recent past' (and that use of the property as a pub at that time did further the social well-being or interests of the local community), they would need to consider whether in their opinion "*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*". If they consider that the property also satisfies that further/second criteria, then they are entitled to and should decide to approve the ACV nomination regarding the property.

Summary

25. As the property is currently vacant it is considered that the S.88(1) criteria is not met.
26. It is accordingly then a question of whether both of the conditions specified in Section 88(2) (a) and (b) are satisfied. It is a matter for the Executive Member for Finance and Performance to consider and determine if that is the case and therefore whether the ACV nomination application in respect of the property should be approved or refused.
27. If the decision is to approve the ACV nomination application 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 of the decision by submitting a J.R. claim to the High Court).

Options

28. The application to list the Jubilee Hotel 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

Council Plan

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

Implications

30. 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).

31. Human Resources (HR) – none

32. Equalities, Crime and Disorder and IT - none

33. Legal – Advice and comments have been sought from Legal Services and incorporated within this report.

34. Property – All property issues included in the report

35. Other – none

Risk Management

There are no significant risks to these applications.

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**Report
Approved**



4/6/21

Ward Affected: Holgate

For further information please contact the author of the report

Annexes

Annex 1 – The Jubilee Hotel Public House, York – Application to add to the list of assets of community value.

Annex 2 – The Jubilee Hotel – Owner’s submission

Annex 3 – Current list of assets of community value

Abbreviations used in the report

ACV Assets of Community Value