

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 Blacksmiths Arms, Naburn, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from Naburn Parish Council.

Recommendations

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

Approve the renewal of the listing of Blacksmiths Arms, Naburn, York, 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 site is owned by Marston's Pubs Limited. The Blacksmiths Arms was previously entered on the Council's list of ACV property on 12 September 2016 following an earlier ACV nomination received on 9 August 2016. Pursuant to Section 87(3) of the Localism Act 2011 land/property must be removed from the ACV list

after 5 years from date of listing. This application is a request to re-add the site onto the Council's AVC list (for a further period of 5 years).

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 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 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 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).

Blacksmiths Arms, Naburn

9. According to Land Registry records, the freehold of the Blacksmiths Arms is owned by Marston's Pubs Limited. The Blacksmiths Arms is currently open and trading. The nomination is being made by Naburn Parish Council (NPC). 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. NPC, 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, Marston's Pubs Limited has been informed in writing that the application has been made. They have been invited to make representations regarding the information.
11. The current tenant of the lease registered with the Land Registry is Danjo Partnership LLP. Notice of the nomination has been served on them in case they still hold any leasehold interest in the property.
12. The occupier of the Blacksmiths Arms has also been advised. No response has been received from the parties consulted.
13. NPC state in their nomination that the services provided by the pub furthers the social wellbeing and interests of the local community with local people being able to enjoy a range of drinks and food in a pleasant, convivial atmosphere.
14. The Blacksmiths Arms is the only pub in the village, and it enables people to meet and socialise in a welcoming environment and has good disabled access.
15. Historically the pub has hosted regular quiz nights, music and beer festivals and fundraising events for local charities.
16. The Blacksmiths arms has been a supporter of camping and marina developments within the village.
17. NPC have confirmed that recently, events have lessened largely driven by the effects of Covid and staffing. This they state makes the pubs preservation more vital.

Analysis

18. 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 (J.R.) of the decision by submitting a J.R. claim to the High Court).

Options & Recommendation

19. The application to renew the listing of the Blacksmiths Arms 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.
20. Based on the information provided, it is recommended to renew the listing of the ACV for the Blacksmiths Arms.

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).

23. Human Resources (HR) – none

24. Equalities, Crime and Disorder and IT - none

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

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

27. **Other** – none

Risk Management

There are no significant risks to these applications.

Contact Details

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**Report
Approved**



01/09/22



Ward Affected: Wheldrake

For further information please contact the author of the report

Annexes

Annex 1 – Blacksmiths Arms, Naburn, York – Application to add to the list of assets of community value.

Annex 2 – Site Plan

Annex 3 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value

NPC – Naburn Parish Council